TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1142.

SUSIE M. KERR, ROSA L. KERR, AND JOSEPH B. KERR, APPELLANTS,

vs.

THE SOUTH PARK COMMISSIONERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 19, 1885.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Tuesday, the 20th day of January, 1885, in the December term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

SUSIE M. KERR, ROSA L. KERR, and JOSEPH B. KERR, Executors, etc.,
vs.
SOUTH PARK COMMISSIONERS *et al.*
} In Chancery.

Be it remembered that on the seventeenth day of May, 1882, there was filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a mandate from the Supreme Court of the United States in said above-entitled cause, which said mandate is in the words and figures following, to wit:

2 *Mandate.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the northern district of Illinois, Greeting:
[SEAL.]

Whereas lately in the circuit court of the United States for the northern district of Illinois, before you, or some of you, in a cause between William P. Kerr, complainant, and John M. Wilson, Paul Cornell, Leveret B. Sidway, George W. Gage, Chauncey T. Bowen, The South Park Commissioners, Charles P. Phillips, and Charles H. Atkins, defendants, wherein the decree of the said circuit court, entered in said cause on the 8th day of October, A. D. 1878, is in the following words, viz:

This cause coming on to be heard upon the consolidated bill, answers, and replications, and proofs, and having been argued by counsel, and the court being sufficiently advised in the premises, it is ordered, adjudged, and decreed that the defendant, The South Park Commissioners, pay to the complainant, William P. Kerr, and his assignees, the value of the premises on the twenty-seventh day of August, A. D. 1870, known and described as the south fractional half of section thirteen, in township thirty-eight north, of range fourteen east, of the third principal meridian, except lots 9, 10, and 15 in Chas. B. Phillip's subdivision of 26 acres off the west side of the S. W. ¼ of said section thirteen, according to plat of the same
3 recorded in the recorder's office of Cook county, in book 98 of maps, p. 9, and the east half of said southwest quarter of said section thirteen, together with interest thereon from the twenty-seventh day of August, A. D. 1870, at the rate of six per cent. per annum, upon the conveyance of said premises by the com-

plainant, William P. Kerr, and his assignees claiming under him, since the commencement of this suit, by deed which shall release to the South Park Commissioners all interest of the said complainant and his assignees.

And it is further ordered that the value of said premises required to be paid be ascertained as follows: A jury shall be empanelled in this court, on the law side thereof, to hear the evidence submitted by both parties, and said jury shall determine by their verdict the value of the land hereinbefore described, on the twenty-seventh day of August, A. D. 1870, the time when possession was taken by the South Park Commissioners, and the verdict shall be certified by the clerk to the chancery side of this court, and the amount so found shall be considered as the value of said premises on the day aforesaid, unless set aside or changed by the further order of this court.

And it is further ordered that the complainant, William P. Kerr, make a deed and procure deeds to be made by all persons claiming under him since the commencement of this suit, conveying to the South Park Commissioners the premises aforesaid, when they
4 shall pay the amount found to be due, with interest from the twenty-seventh day of August, A. D. 1870, at the rate of six per centum per annum; and the court denies any relief to the complainant as to the east half of the southwest quarter of section 13 aforesaid; and it is ordered that the bill of complaint be dismissed as to that part of the premises.

And it appearing to the court that the South Park Commissioners have commenced proceedings to condemn the undivided one-quarter of the west half of the southeast quarter of section twenty-four, in township thirty-eight north, of range fourteen east, of the third principal meridian, another of the tracts described in the bill belonging to the complainant, it is ordered that all questions touching the same be reserved for the further order of the court.

It is further ordered that the question of costs be postponed for the further consideration and order of the court, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the South Park Commissioners and a cross appeal taken by William P. Kerr, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and eighty-one, the said cause came on to be heard before the said Supreme Court, on the
5 said transcript of record on appeal and cross-appeal and was argued by counsel:

On consideration whereof, the court being equally divided in opinion, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby affirmed, each party paying the costs of their appeal in this court.

12th December, 1881.

You, therefore, are hereby commanded that such proceedings be

had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeals notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighty-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Endorsed: Filed May 17, 1882. W. H. Bradley, clerk.

6 Afterwards, to wit, on the twentieth day of May, in the adjourned May term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM P. KERR
vs.
JOHN M. WILSON, PAUL CORNELL, LEVERET B. SIDWAY, GEORGE W. GAGE, CHAUNCEY T. BOWEN, The South Park Commissioners, CHARLES B. PHILLIPS, and CHARLES H. ATKINS. } In Chancery.

M. W. Fuller, Esq., having filed in this court the mandate from the Supreme Court affirming the decree entered herein, it is ordered that said cause be redocketed, and upon suggestion by counsel of the death of William P. Kerr, complainant, leave is hereby given either party to file a bill of revivor herein within twenty days.

7 Afterwards, to wit, on the twelfth day of June, in the adjourned May term of the said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM P. KERR
vs.
THE SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

On motion of Mr. Washburn the time for the representatives of William P. Kerr to file a bill of revivor herein is hereby extended twenty days, and the same is done without prejudice to the right of defendants to move to remand.

Afterwards, to wit, on the first day of November, 1882, came the South Park Commissioners, by their solicitor, and filed in said clerk's office a bill of revivor in said entitled cause, which said bill of revivor is in the words and figures following, to wit:

8 *Bill of Revivor.*

In the United States Circuit Court, Northern District of Illinois.
In Chancery.

WILLIAM P. KERR
vs.
JOHN M. WILSON, THE SOUTH PARK COMMISSIONERS, *et al.*

SOUTH PARK COMMISSIONERS *vs.* SUSIE M. KERR, & *als.*

To the honorable the judge of said court, in chancery sitting:

Your orator, The South Park Commissioners, a corporation created and organized under and by virtue of the laws of the State of Illinois, and situated in the county of Cook, in the northern district thereof, respectfully represents unto your honor—

That in 1869 and 1870 two certain bills of complaint were exhibited in this court by one William P. Kerr, then residing in the State of Ohio, against John M. Wilson *et als.*, to one of which your
9 orator was made party defendant on the 26th day of September, 1870; that both said bills were consolidated November 2nd, 1874, and the complainant, said Kerr, ordered to file an engrossed bill containing the material allegations of both the former bills, which order said Kerr complied with, and filed his engrossed bill January 27th, 1875.

That your orator filed its answer to the same July 6th, 1875, and subsequently said bill was amended, and your orator filed its answer to the consolidatied bill as amended February 3rd, 1876.

That the proceedings upon said bill resulted in a decree of said court therein entered on the 8th day of October, 1878, wherein and whereby it was ordered and decreed that said cause be dismissed as to the east half of the southwest quarter of fractional section thirteen, in township thirty-eight north, of range fourteen east, of the third principal meridian; and that as to the south fractional half of said section thirteen, except said east half of the southwest quarter and lots nine, ten, and fifteen, in Charles B. Phillips' subdivision of twenty-six acres, off the west side of the southwest quarter of said fractional section thirteen, the value of said land on the 27th day of August, 1870, be ascertained by the verdict of a jury, to be cer-
tified to the chancery side of the court, to be then set aside
10 or changed or taken as the value of said property, as the court might determine.

That from the said decree your orator prayed an appeal, and the said complainant therein, William P. Kerr, also prayed an appeal, to the Supreme Court of the United States, which Court subsequently and about December, 1881, having considered said appeal, affirmed said decree, and, petition for rehearing having been filed therein, finally disposed of the same between December, 1881, and May, 1882; whereupon, upon the adjournment of said court in May, 1882, your orator caused the mandate of said Supreme Court of the United States affirming said decree to be filed herein.

That in April, A. D. 1882, the said William P. Kerr departed this life, having first duly made and published his last will and testament, in writing, bearing date the first day of April, A. D. 1882, which was duly admitted to probate by the probate court of Licking county, Ohio, in which county said Kerr resided and died on the 31st day of May, A. D. 1882, and thereby said Kerr devised and bequeathed all his property, real, personal, and mixed, unto his wife, Susie M. Kerr, and his daughter, Rosa L. Kerr, and his son, Joseph B. Kerr, as executors, to be by them evenly divided into seven shares, and one equal seventh part thereof to be given to his, said Kerr's, wife and six children, share and share alike; and also thereby
11 empowered and directed his said executors to sell and deeds to make and deliver to the said purchaser, either at public or private sale, any or all his real estate, or any part thereof, at such times and on such terms as they might think best, or to lease the same, a copy of which said will is hereunto annexed, marked "Exhibit A," and prayed to be taken as part hereof.

That the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, after said will was duly probated as aforesaid, took upon themselves the burden of the execution thereof, and your orator, in filing the mandate aforesaid, suggested the death of said Kerr, and leave was granted to either party to file a bill of revivor herein, and your orator is entitled, inasmuch as the said suit and proceedings have become abated by the death of said William P. Kerr, and not been heretofore revived, to have the same revived against the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, as trustees and executors under the will of said William P. Kerr, deceased.

Forasmuch, therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, trustees and executors, who are made parties defendant to this bill of revivor, may be required to make full and true answer to the same, but not
12 under oath (the answer under oath being hereby waived), that the said suit and proceedings may stand and be revived against said defendants to the bill of revivor as complainants in said original bill, and be in the same plight and condition as the same were in at the time of the abatement thereof, and that your orator may have the benefit thereof, and that your orator may have such other and further relief in the premises as equity may require and as to your honors shall seem meet—

May it please your honor to grant the writ of summons in chancery directing the marshal of this district to summon said defendants, then and there to answer this bill, etc., etc.

And, as in duty bound, your orator will ever pray, etc., etc.

SOUTH PARK COMMISSIONERS,
By its Att'y, M. W. FULLER.

M. W. FULLER,
Of Counsel.

13 EXHIBIT A.

In the name of the Benevolent Father of all I, William P. Kerr, of Granville, Licking county, Ohio, do make, publish, and declare this to be as and for my last will and testament.

Item 1st. I direct that all my just debts be fully paid.

Item 2nd. I devise and bequeath all my property, real, personal, and mixed, unto my beloved wife, Susie M. Kerr, and my daughter, Rosa L. Kerr, and my son, Joseph B. Kerr, as executors, to be by them equally divided into seven shares, and one equal seventh part thereof to be given to my said wife and my six children, to wit, Rosa L., Abby J., Joseph B., Hattie B., William P., and George Kerr, share and share equally to my said wife and said six children.

Item 3rd. I hereby authorize, empower, and direct my said executors to sell and deeds to make and deliver to the purchasers, either at public or private sale, any or all my real estate, at such times and on such terms as they may think best, or to lease the same, or any part thereof, the proceeds to be divided as aforesaid. (The money heretofore advanced my son, Joseph B., and invested in Utah, not to be considered a part of my estate, but as a naked gift to him.)

14 Item 4th. I desire and direct that my said executors be not required to give bond as such, and that no appraisers be appointed, nor shall any inventory or appraisement of my property be made, intending that my said executors shall divide and dispose of all my estate, as aforesaid, without the intervention of a court of probate, except to probate the will and issue letters testamentary, and I authorize and direct my said executors to carry out all my contracts as fully as I could myself do.

Item 5th. I hereby constitute and appoint my beloved wife, Susie M. Kerr, testamentary guardian of both the persons and property of my three last-named minor children, and direct that she be required to give no bond or surety as said guardian, either of or for their persons or estate, the devise above to my said wife being in lieu of a dower in all of my real estate and her year's allowance and articles that would be set off to her under the statute.

Item 6th. I hereby revoke all former wills by me made, declaring this to be my last will and testament.

WILLIAM P. KERR. [SEAL.]

Witnessed April 1st, 1882.

Endorsed: Filed Nov. 1, 1882. Wm. H. Bradley, clerk.

15 On the same day, to wit, on the first day of November, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

SUSIE M. KERR, ROSA L. KERR, and JOSEPH B. Kerr, Executors and Trustees of William P. Kerr, Deceased,
vs.
THE SOUTH PARK COMMISSIONERS *et al.*
} In Chancery.

And

SOUTH PARK COMMISSIONERS
vs.
SUSIE M. KERR *et al.*
} Bill of Revivor.

This cause coming on to be heard this day, and it appearing to the court that heretofore one William P. Kerr, of Licking county, Ohio, exhibited his consolidated bill in this court against the South Park Commissioners *et al.*, to be relieved touching the several matters therein contained, and that afterwards, on the eighth day of October, A. D. 1878, a decree was entered in favor of the complainant therein, and that the said William P. Kerr departed this life in April, 1882, having first duly made his will, wherein he appointed the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr his executors and trustees, with power of sale and conveyance of his, said William P. Kerr's, real estate, who duly proved the said will
16 in Licking county, Ohio, May 31st, 1882, and that the said original suit and proceedings abated by the death of the said William P. Kerr, and that the said South Park Commissioners exhibited their bill of revivor in this court against the said Susie M. K. Kerr, Rosa L. Kerr, and Joseph B. Kerr, trustees and executors, and they having duly appeared, waived service of process, and consented to the revival of said cause:

It is ordered that the said suit and proceedings herein referred to originally brought by said William P. Kerr do stand revived in the name as complainants of the said Susie M., Rosa L., and Joseph B. Kerr, trustees and executors of said William P. Kerr, deceased, and be in the same plight and condition they were in at the time of the death of the said William P. Kerr.

17 Afterwards, to wit, on the eighteenth day of February, 1884, in the December term of said court, 1883, in the record of the proceedings thereof in said entitled cause before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al.*
vs.
THE SOUTH PARK COMMISSIONERS *et al.*

This cause coming on to be heard upon the motion of the South Park Commissioners that the verdict hereinbefore on the fifth day of November, 1883, rendered be set aside and a new trial be awarded: It is ordered by the court that upon payment by said South Park

Commissioners of the costs of said trial, to be taxed by the clerk, and the deposit in the registry of the court by said South Park Commissioners of the sum of twenty-five thousand dollars on account of compensation, which may be finally decreed to be paid by said South Park Commissioners for the land in controversy in said cause,
said sum of twenty-five thousand dollars to be treated
18 as a payment thereon from the date of such deposit, that said motion to set aside said verdict be sustained, and thereupon the said South Park Commissioners paid the costs, taxed by said clerk at fifty-one dollars and forty cents, and deposited in the registry of said court the sum of twenty-five thousand dollars as aforesaid; and it is accordingly ordered that said motion be sustained, and said verdict be, and the same is hereby, set aside and a new trial awarded herein, the taxable costs whereof are to be paid by said South Park Commissioners when said trial has been had.

19 Afterwards, to wit, on the twenty-fourth day of May, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause before Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

Order.

SUSIE M. KERR *et al.*
vs.
SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause comes on to be heard upon the motion of Mr. Fuller to settle the issues to be submitted to the jury, and after hearing the arguments of counsel in part it is ordered by the court that further hearing herein be continued to Tuesday morning next.

Afterwards, to wit, on the twenty-seventh day of May, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause before Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

Order.

SUSIE M. KERR *et al.*
vs.
SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

20 Now again come the parties, by their solicitors, and this cause is resumed upon the hearing of the motion to settle the issues to be submitted to the jury, and after hearing the concluding arguments of counsel the court, not being sufficiently advised in the premises, takes time to consider.

Afterwards, to wit, on the eleventh day of June, in the adjourned May term of said court, 1884, in the record of the proceedings thereof

in said entitled cause before Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

Order.

SUSIE M. KERR *et al.*
vs.
THE SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

This matter coming on upon the motion filed herein May fifteenth, 1884, by the South Park Commissioners for the framing of an issue, as in said motion stated, it is ordered by the court that said motion be, and the same is hereby, overruled, and this cause, upon motion of the complainants, is set down for the trial of the issue stated in the decree of October eighth, 1878, on the third Tuesday of October next.

To which the South Park Commissioners now and here except.

21 Afterwards, to wit, on the second day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now come the parties, by their solicitors, and this cause now comes on to be heard upon the issues stated in the decree entered herein on the eighth day of October, A. D. 1878, and now come the following jury of good and lawful men, to wit, G. W. Dean, Jerome B. Burnett, S. A. Ballou, Theodore Gestefeld, John Ryan, Albert T. Jones, Silas Enyart, William H. Colcord, William J. Laws, Frederick Marguardt, Winfield S. Corning, and John B. Platt, who were all duly elected, tried, and sworn to try said issue, and, after hearing a part of the evidence, the hour of adjournment having arrived, it is ordered that further hearing herein be postponed until to-morrow morning.

Afterwards, to wit, on the third day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

22 *Order.*

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by their solicitors; also come the jury empaneled herein, and this cause comes on to be further heard in pursuance of the order of postponement entered herein yesterday, and, after hearing additional evidence herein, the further hearing of this cause is hereby postponed until to-morrow morning.

Afterwards, to wit, on the fourth day of December, in the odjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties herein, by their solicitors; also come the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing additional evidence, the hour of adjournment having arrived, further hearing herein is hereby postponsd until to-morrow morning.

23 Afterwards, to wit, on the fifth day of December in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties herein, by their solicitors; also come again the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing additional evidence, the hour of adjournment having arrived, further hearing herein is hereby postponed until to-morrow morning.

Afterwards, to wit, on the sixth day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gesham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

24 Now again come the parties herein, by their solicitors; also come again the jury in this behalf empaneled and sworn, and this cause again comes to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing additional evidence, the hour of adjournment having arrived, further hearing herein is hereby postponed until Monday morning next.

Afterwards, to wit, on the eighth day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in the said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* THE SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by their solicitors, and now again come the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postponement entered herein on Saturday last, and, after hearing additional evidence, the hour of adjournment having arrived, further hearing herein is hereby postponed until to-morrow morning.

25 Afterwards, to wit, on the ninth day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by their solicitors, and now again come the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing additional evidence, the hour of adjournment having arrived, further hearing herein is hereby postponed until to-morrow morning.

Afterwards, to wit, on the tenth day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by ther solicitors, and now
26 again come the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing additional evidence, the hour of adjournment having arrived, further hearing herein is hereby postponed until to-morrow morning.

Afterwards, to wit, on the eleventh day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by their solicitors, and also come again the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postpone-

ment entered herein yesterday, and, after hearing additional evidence, the hour of adjournment having arrived, further hearing is hereby postponed until to-morrow morning:

Afterwards, to wit, on the twelfth day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

27 *Order.*

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by their solicitors, and also again come the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing the concluding evidence and the arguments of counsel in part, the hour of adjournment having arrived, further hearing hearing herein is hereby postponed until to morrow morning.

Afterwards, to wit, on the thirteenth day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by their solicitors; also come again the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing additional argu-
28 ments of counsel, the hour of adjournment having arrived, further hearing herein is hereby postponed until Monday morning next.

Afterwards, to wit, on the fifteenth day of December, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by their solicitors, and also again come the jury in this behalf empaneled and sworn, and this cause again comes on to be heard in pursuance of the order of postponement entered herein on Saturday last, and, after hearing the concluding arguments of counsel and receiving the instructions of the court, the jury retired to consider their verdict.

Afterwards, to wit, on the sixteenth day of December, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

29 SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now again come the parties, by their solicitors, and also come the jury in this behalf empaneled and sworn, and return into court this day the following verdict, to wit: We, the jury, fix the value of the tracts of land in controversy, comprising one hundred and eleven acres, as of the date of the twenty-seventh of August, 1870, at one hundred and fifty-five thousand four hundred dollars ($155,400). And thereupon the complainants, by their solicitor, move the court for a new trial herein.

Afterwards, to wit, on the twenty-second day of December, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

It is ordered that the complainants' motion for a new trial herein be set for hearing on the third day of January next.

30 Afterwards, to wit, on the tenth day of January, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al. vs.* SOUTH PARK COMMISSIONERS *et al.*

Now come the parties, by their solicitors, and now comes on to be heard complainants' motion for a new trial herein, and, after hearing the arguments of counsel in part, further hearing herein is hereby postponed until Monday morning next.

Afterwards, to wit, on the twelfth day of January, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR, ROSA L. KERR, and JOSEPH B. KERR, Executors, &c.,

vs.

SOUTH PARK COMMISSIONERS *et al.*

31 This cause coming on upon the motion of the plaintiffs Kerr that the verdict hereinbefore, on the sixteenth day of

December, 1884, rendered, determining the value of the south fractional half of section thirteen, in township thirty-eight north, of range fourteen east, of the third principal meridian, except lots 9, 10, and 15 in Charles B. Phillips' subdivision of 26 acres off the west side of the south vest quarter of said section thirteen, according to plat of same recorded in the recorder's office of Cook county, in book 98 of maps, p. 9, and the east half of said southwest quarter of said section thirteen, on the 27th day of August, A. D. 1870, in accordance with the decree entered in the above-entitled cause on the chancery side of this court, on the eighth day of October, A. D. 1878, be set aside and a new trial awarded; and, the court having heard the arguments of counsel and being fully advised in the premises, overrules said motion and directs said verdict to be certified by the clerk as provided in said decree; to which said plaintiffs Kerr now and here except.

On the same day, to wit, on the twelfth day of January, 1885, there was filed in said clerk's office the certificate of the clerk in said entitled cause, which said certificate is in the words and figures following, to wit:

32 United States Circuit Court, Northern District of Illinois.

SUSIE M. KERR and ROSA L. KERR, JOSEPH B. KERR, Executors, etc.,
v.
SOUTH PARK COMMISSIONERS.

I, William H. Bradley, clerk of said court, do hereby certify that the following is the verdict rendered on the 16th day of December, A. D. 1884, by the jury empannelled in the above-entitled cause to determine the value of the south fractional half of section thirteen, in township thirty-eight, north of range fourteen east of the third principal meridian, except lots 9, 10, and 15, in Charles B. Phillips' subdivision of 26 acres off the west side of the southwest quarter of said section thirteen, according to plat of the same recorded in the recorder's office of Cook county in book 98 of maps, p. 9, and the east half of said southwest quarter of said section thirteen, on
33 the 27th day of August, A. D. 1870, as provided in the decree of this court in the above-entitled cause entered on the 8th day of October, A. D. 1878, on the chancery side of this court, to wit: "We, the jury, fix the value of the tracts of land in controversy, comprising one hundred and eleven acres, as of the date of the 27th of August, 1870, at one hundred and fifty-five thousand four hundred dollars ($155,400). W. H. Colcord, Theo. Gestfeld, J. B. Platt, Frederick Marquardt, John Ryan, Albert I. Jones, Silas Engart, Jerome Burnett, S. A. Ballou, Geo. W. Dean, W. S. Corning, Wm. J. Laws;" which said verdict is hereby certified by the clerk to the chancery side of this court as by said decree and the order overruling said motion to set aside said verdict directed.

As witness my hand and the seal of said court this 12th day of January, A. D. 1885.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Jan'y 12, 1885. Wm. H. Bradley, clerk.

34 Afterwards, to wit, on the twentieth day of January, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al.*
vs.
SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

This cause coming on to be heard upon the pleadings, orders, and decree of October eighth, 1878, herein, and the mandate of the Supreme Court herein filed May 17th, A. D. 1882, and the verdict of the jury rendered upon the law side of this court on the sixteenth day of December, A. D. 1884 (the motion to set aside the same having been overruled), and certified by the clerk to the chancery side of this court, determining the value of the tracts of land described in the decree herein entered on the eighth day of October, A. D. 1878, to have been on the twenty-seventh day of August, A. D. 1870, the sum of one hundred and fifty-five thousand four hundred dollars, and the evidence, rulings, and charge of the court upon the trial of the issue as to said value, it is hereby ordered, adjudged, and decreed that said amount of one hundred and fifty-five thousand four hundred dollars be, and it is hereby, adjudged to be the value of said tracts of land at that date; and it appearing to the court
35 that the said complainants cannot at present comply with said decree of October eighth, 1878, and that various claims are set up as against said complainants to said value or portions thereof, it is ordered that the South Park Commissioners pay into court the said sum of one hundred and fifty-five thousand four hundred dollars, with interest thereon from the twenty-seventh day of August, A. D. 1870, at the rate of six per cent. per annum to the date of such payment, and that upon such payment into court the said South Park Commissioners be discharged from further liability for interest in the premises, and that the distribution of said money when paid into court be reserved until further order.

And the South Park Commissioners exhibiting to the court the pleadings, orders, proofs, and decree of August twenty-sixth, 1882, in a certain cause on the chancery side of this court, wherein the South Park Commissioners was complainant and Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, etc., of William P. Kerr, deceased, and others were defendants, wherefrom it appears that on the twenty-ninth day of November, 1879, the sum of eighty-two thousand eight hundred dollars, and on the twenty-sixth day of February, 1880, the sum of seventy-two hundred dollars, of the moneys of the said South Park Commissioners came to the hands of the said Kerrs, complaints in this case, and that the sum of forty-two hundred and twenty dollars and nineteen cents was paid into this court in
36 that suit December first, 1882, as appears from the order of this court in that cause on that day entered, all these moneys being paid on account of the lands in this cause mentioned; and it

further appearing that the sum of twenty-five thousand dollars was paid into court in this cause on the eighteenth day of February, 1884, on account of said lands, it is ordered that said several sums of eighty-two thousand eight hundred dollars, with interest from November twenty-ninth, 1879; seventy-two hundred dollars, with interest from February twenty-sixth, 1880; forty-two hundred and twenty dollars and nineteen cents as of the date of the payment into court herein provided for, and twenty-five thousand dollars, with interest from February eighteenth, 1884, be applied on said principal sum of one hundred and fifty-five thousand four hundred dollars, and interest, and that the South Park Commissioners pay into court under this decree only the balance thereby arrived at, together with the commission provided by law thereon, and the sum of two hundred and fifty dollars, the commission on the sum of twenty-five thousand dollars so paid February eighteenth, 1884, as aforesaid, and interest thereon from that date.

And it is also ordered that the deed of James R. Doolittle referred to in said decree of August twenty-sixth, 1882, in the cause of the South Park Commissioners against Susie M. Kerr and others may be executed and delivered to said South Park Commissioners; and that thereupon said sum of forty-two hundred
37 and twenty dollars and nineteen cents may be taken from the registry of this court by said complainants Kerr, without prejudice to any appeal in said cause in which said money was so paid into court, and deed directed to be delivered as aforesaid.

Afterwards, to wit, on the thirteenth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al.*
vs.
SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

Now come the complainants, by John Dunlevy, their solicitor, and move the court for an appeal herein to the Supreme Court of the United States, and said motion is set for hearing on the fourteenth day of March instant.

38 Afterwards, to wit, on the fourteenth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

SUSIE M. KERR *et al*
vs.
SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause comes on

to be heard on the complainants' motion for an appeal to the Supreme Court of the United States from the decree entered herein on the twentieth day of January last, and, after hearing the arguments of counsel, the court allows said appeal upon the complainants giving bond in the penal sum of one thousand dollars with security, to be approved by the court, said bond to be verified and not to act as a supersedeas.

39 On the same day, to wit, on the fourteenth day of March, 1885, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit.

Appeal Bond.

Circuit Court of the United States, Northern District of Illinois.
In Equity.

SUSIE M. KERR, ROSA L. KERR, JOSEPH B. KERR
vs.
SOUTH PARK COMMISSIONERS.

Know all men by these presents, that we, Susie M. Kerr, Rosa L. Kerr, Joseph B. Kerr, of Licking county, Ohio, and John C. Dunlevy and John B. Drake, both of Chicago, Illinois, are held and firmly bound unto the South Park Commissioners, of Chicago, Illinois, in the penal sum of one thousand dollars ($1,000.00), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas on the sixteenth day of December, 1884, the jury rendered a verdict in this cause, and on the twentieth day of January, 1885 (a motion to set aside the verdict and grant a new trial having been overruled)
40 a final decree on said verdict was entered in the above-mentioned cause, from which decree said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, complainants, have taken an appeal to the Supreme Court of the United States:

Now, therefore, if the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr shall duly prosecute the said appeal with effect, and shall pay all damages and costs that may be awarded against them in case the said decree shall be affirmed in the said Supreme Court of the United States, then the above obligation shall be void; otherwise to remain in full force and effect.

In witness whereunto we have hereunto set our hands and seals this 21st day of February, A. D. 1885.

JNO. C. DUNLEVY. [SEAL.]
JNO. B. DRAKE. [SEAL.]

Attest:
HENRY Q. MORGAN.

Approved, but not as a supersedeas.

W. Q. GRESHAM.

Endorsed: Filed March 14, 1885. Wm. H. Bradley, clerk.
3—1142

41 Afterwards, to wit, on the thirteenth day of August, in the July term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

SUSIE M. KERR *et al.*
vs.
THE SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

Now come the complainants, and by Isham *and* Lincoln, their solicitors, and present to the court an alleged copy of the testimony taken before the jury heretofore empaneled in this cause, and move that the same be certified by the court and made a certificate of evidence and a part of the record in this cause, to which motion the defendants, the South Park Commissioners, by M. W. Fuller, its solicitor, objects, and thereupon the court takes the motion under advisement.

41½ Afterwards, to wit, on the sixth day of October, in the adjourned October term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Walter Q. Gresham, circuit judge, is the following entry to wit:

Order.

SUSIE M. KERR *et al.*
vs.
THE SOUTH PARK COMMISSIONERS. } In Chancery.

This matter coming on upon the motion of complainants Kerr, herein entered August thirteenth, 1885, *and* the court, being now sufficiently advised in the premises, sustains said motion, and signs the copy of evidence presented on that day *nunc pro tunc* as of said August thirteenth, 1885.

42 On the same day, to wit, on the sixth day of October, 1885, there was filed in said clerk's office a certificate of evidence in said entitled cause, which said certificate of evidence is in the words and figures following to wit:

In the United States Circuit Court for the Northern District of Illinois.

KERRS *vs.* THE SOUTH PARK COMMISSIONERS.

Before Judge Gresham and a jury.

This certifies that on the 2nd day of December, 1884, the above cause, before the Honorable Walter Q. Gresham, judge of the United States circuit court for the northern district of Illinois, came on for trial before a jury impaneled as directed by the decree of Oct. 8th, 1878, on the law side of this court, which trial was continued until concluded on the 16th day of December, A. D. 1884, and thereupon the complainants, Kerrs, adduced the following evidence, given orally before the court and jury (except where otherwise noted), to wit:

43 R. P. LAYTON, a witness called on behalf of complainants, being duly sworn, was examined by Mr. Dunlevy, and testified as follows:

Q. Where do you reside?
A. At present in the suburbs at Washington Heights.
Q. Suburbs of Chicago?
A. Yes, sir.
Q. How long have you lived in Chicago?
A. I came here in '65, and I have been away nearly five years in that time.
Q. From '65 to '71 were you in Chicago?
A. Yes, sir.
Q. In '72?
A. Yes, sir.
Q. In '71?
A. Yes, sir.
Q. What was your business and occupation during that time?
A. Buying and selling real estate.
Q. Did you deal in real estate in the west, south, or north sides, principally?
A. In all sections, but perhaps more in the south than others.
44 Q. South of the city?
A. South side of the city.
Q. In the township of Hyde Park?
A. I mean the whole of the south side; Hyde Park, Lake, and South Chicago.
Q. Will you state whether about August 27, 1870, before or after, do you know of the location of the South Park—the east part of South Park?
A. Yes, sir.
Q. Will you state whether in that vicinity and neighborhood you made sales of property or purchases about the 27th of August, 1870, before or afterwards.
A. We made them both before and after in that locality and neighborhood.

Mr. DUNLEVY: I have a map of that section of the country certified to by the county recorder, which I propose to have the witnesses and jury use.

Mr. FULLER: That map is objected to. I have no objection to the map of the park itself, and it seems to me this tends to mislead. It involves an enquiry as to the different subdivisions.

Q. You may state where and what sales you made and where they were located, with reference to the 80 acres which lies between 59th street on the north and 63rd street on the south and Stony Island avenue on the west; state whether you made sales in that vicinty; and, if so, at what prices.

Mr. GREEN: We object to the question.
45 Mr. DUNLEVY: I propose to prove actual sales which are standards on value.

41 Afterwards, to wit, on the thirteenth day of August, in the July term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

SUSIE M. KERR *et al.*
vs.
THE SOUTH PARK COMMISSIONERS *et al.* } In Chancery.

Now come the complainants, and by Isham *and* Lincoln, their solicitors, and present to the court an alleged copy of the testimony taken before the jury heretofore empaneled in this cause, and move that the same be certified by the court and made a certificate of evidence and a part of the record in this cause, to which motion the defendants, the South Park Commissioners, by M. W. Fuller, its solicitor, objects, and thereupon the court takes the motion under advisement.

41½ Afterwards, to wit, on the sixth day of October, in the adjourned October term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Walter Q. Gresham, circuit judge, is the following entry to wit:

Order.

SUSIE M. KERR *et al.*
vs.
THE SOUTH PARK COMMISSIONERS. } In Chancery.

This matter coming on upon the motion of complainants Kerr, herein entered August thirteenth, 1885, *and* the court, being now sufficiently advised in the premises, sustains said motion, and signs the copy of evidence presented on that day *nunc pro tunc* as of said August thirteenth, 1885.

42 On the same day, to wit, on the sixth day of October, 1885, there was filed in said clerk's office a certificate of evidence in said entitled cause, which said certificate of evidence is in the words and figures following to wit:

In the United States Circuit Court for the Northern District of Illinois.

KERRS *vs.* THE SOUTH PARK COMMISSIONERS.

Before Judge Gresham and a jury.

This certifies that on the 2nd day of December, 1884, the above cause, before the Honorable Walter Q. Gresham, judge of the United States circuit court for the northern district of Illinois, came on for trial before a jury impaneled as directed by the decree of Oct. 8th, 1878, on the law side of this court, which trial was continued until concluded on the 16th day of December, A. D. 1884, and thereupon the complainants, Kerrs, adduced the following evidence, given orally before the court and jury (except where otherwise noted), to wit:

43 R. P. LAYTON, a witness called on behalf of complainants, being duly sworn, was examined by Mr. Dunlevy, and testified as follows:

Q. Where do you reside?
A. At present in the suburbs at Washington Heights.
Q. Suburbs of Chicago?
A. Yes, sir.
Q. How long have you lived in Chicago?
A. I came here in '65, and I have been away nearly five years in that time.
Q. From '65 to '71 were you in Chicago?
A. Yes, sir.
Q. In '72?
A. Yes, sir.
Q. In '71?
A. Yes, sir.
Q. What was your business and occupation during that time?
A. Buying and selling real estate.
Q. Did you deal in real estate in the west, south, or north sides, principally?
A. In all sections, but perhaps more in the south than others.
44 Q. South of the city?
A. South side of the city.
Q. In the township of Hyde Park?
A. I mean the whole of the south side; Hyde Park, Lake, and South Chicago.
Q. Will you state whether about August 27, 1870, before or after, do you know of the location of the South Park—the east part of South Park?
A. Yes, sir.
Q. Will you state whether in that vicinity and neighborhood you made sales of property or purchases about the 27th of August, 1870, before or afterwards.
A. We made them both before and after in that locality and neighborhood.

Mr. DUNLEVY: I have a map of that section of the country certified to by the county recorder, which I propose to have the witnesses and jury use.

Mr. FULLER: That map is objected to. I have no objection to the map of the park itself, and it seems to me this tends to mislead. It involves an enquiry as to the different subdivisions.

Q. You may state where and what sales you made and where they were located, with reference to the 80 acres which lies between 59th street on the north and 63rd street on the south and Stony Island avenue on the west; state whether you made sales in that vicinty; and, if so, at what prices.

Mr. GREEN: We object to the question.
45 Mr. DUNLEVY: I propose to prove actual sales which are standards on value.

Mr. GREEN: If they propose to prove actual sales we object, and we shall wish to be heard.

Mr. DUNLEVY: We propose to prove sales in the vicinity of a similar topographical character; sales of land by which to judge of this land; in other words, to establish the market price.

The COURT: I believe the witness said that he knew of sales in that vicinity.

A. Yes, sir; I knew of sales in that vicinity.

Q. In what locality in this vicinity do you know of sales, or did you know of sales or purchasers?

A. I know of a sale made by our house adjoining the park on the north side of about 40 acres in one tract.

Q. When was it?

A. It was some time in 1870. I am hardly able to designate the date. I should have to refer to old books and memoranda. The sale I refer to covers this piece of ground here which covers the ground on the north side—those two white pieces there of about 40 acres. I think our survey was made from what is called low-water mark or city datum, and there was 13 acres included also in the purchase a little west of the same locality which did not border on the park, but within a quarter of a mile. The other sales were made in that vicinity, as near as I can place my pencil, in the several blocks adjoining a part of this property, some 53 acres
46 in all, included in that sale at that time, which was made some time in 1870.

Q. From whom, to whom, and at what price?

Counsel for defendant objects to the price.

Question withdrawn.

Q. At what price was the sale you speak of?

Objected to.

The COURT: What time did you say this was?

A. It was some time in 1870.

Q. Winter or summer?

A. It was probably in the winter or fall, as near as I can recollect.

Mr. THOMPSON: I would say that heretofore in this case, and in all cases I have had anything to do with, the court has used discretion in fixing the limit of time within which it will allow sales to be shown.

(The objection to the testimony was then argued at length before the court, and was unfinished at the time of the adjournment.)

47 WEDNESDAY, *Dec. 3rd*, 1884—10 a. m.

Court met pursuant to adjournment.

The COURT: Are the sales which the witness was about to speak of about the property abutting on the park, Mr. Green?

A. Yes, your honor.

Mr. DUNLEVY: We have not asked any yet abutting on it, but propose to prove all about the property for a mile beyond it.

The COURT: Well, go on and we will see. We must recognize this decision of the supreme court of Illinois as the law. The difficulty is in giving it application to the facts during the progress of the trial. I suppose we will have to proceed and direct the jury afterwards on the point. Now, gentlemen, I understand your position to be this: Under the decision of the supreme court of Illinois they can only be permitted to show what the property not abutting on the park sold for after proceedings had been commenced.

Mr. GREEN: That is it exactly.

The COURT: Well, gentlemen of the jury, the supreme court of this State has held that when property has been designated for a park, such as in this case, in determining the value of that property and making compensation to the owners it will not do to show what the property abutting on that park sold for in view of the construction and maintenance of the park. The abutting proprietors
48 are required to pay for the property, as I understand it, which is taken for park purposes. That is upon the theory that the construction of the park and the maintenance of the park will add materially to the value of the abutting property, and, therefore, the value of this abutting property thus appreciated cannot be taken as a fair criterion of the property in the park for which the abutting proprietors are required to pay. You will bear that in mind, gentlemen.

REUBEN P. LAYTON recalled on behalf of the plaintiff.

Direct examination by Mr. DUNLEVY:

Q. Mr. Layton, you may describe the piece of property, the Dobbins tract, of which you spoke just before going onto the stand and of which you are asked to give the selling price on about the 27th day of August, 1870.

Objected to, overruled, and exception.

Plan is handed to the witness.

A. It was a piece of property lying adjacent to the park—fronting it on the south—that is, the park lying south of the land, bounded by Lake Michigan on the east and by the Illinois Central railroad on the west, or nearly so, a street and the railroad, and bounded on the north by the village of Hyde Park, and lying pretty nearly square, perhaps a little longer on the park; it is a little
49 larger east and west than it is north and south.

Q. You may state in what sections, whether there were two different sections or whether it was in one section.

A. I cannot describe it unless it is on this plan; 56th street is the southern boundary of the land.

Q. What is the nearest boundary—how many blocks of it?

A. The nearest boundary is 54th street, between 54 and 56th street- and the Chicago and Illinois Central railroad.

Q. That was two blocks. Now, did the upper block bound the park?

A. It did not. The upper block bounded on 55th street, between 54th and 55th streets.

Q. The street ran between the two and made two blocks, or two blocks and a half from the park at the furthest of it?

A. Yes, sir.

The COURT: Does the street run between it east and west?

A. I think so at that time.

The COURT: What is the size of this body of land?

A. There was calculated 40 acres, I think, in the sale, although it was of course measured down to low-water mark.

Mr. GREEN: Not 40 acres in that piece?

A. Yes, sir; 47 and a fraction was the actual amount, and my recollection is there was 40 in the tract bounded between
50 54th and 56th streets.

Mr. DUNLEVY: West of the railroad and east of the lake?

A. There was 24 in the upper and 16 in the south, I guess you will find.

Q. Now, in order to save the question, and to bring them all in, you may state, Mr. Layton, whether you know of sales that are not bounded by the park—that have no portion of the tract upon the park, here and here and here (indicating plan). See if you know of any sale there.

A. Well, part of the same sale included 13 acres of ground which laid just west of the railroad track. Here is the land and there is 47 and 58; within those six blocks there somewhere there was about 13 acres of land included in this same purchase.

Q. That did not abut on the park?

A. That didn't abut on the park.

Q. How far from the park is the 13 acres?

A. Well, the outside block did not lie more than a third of a mile away.

The COURT:

Q. Let me ask one question: What is meant by abutting property upon which the benefits were assessed here?

Mr. GREEN: The whole assessment was distributed over Hyde Park and South Chicago, and graduated so that those abutting the park took the most and those distant took the least.

51 The WITNESS: Then I know of sales that were made directly west of the park in this locality.

Mr. FULLER: State where it is.

A. In the southwest quarter of section 14.

The COURT: State how far that is from the park.

A. Well, from one-half to three-quarters of a mile; that is, this sale that I am referring to now.

Mr. SWETT: In which direction?

A. Directly west.

Mr. SWETT: Directly west of the park?

A. Yes, sir; directly west of the park.

Q. Three-fourths of a mile—how much land was sold there?

A. Well, there were two or three transactions by which five acres were sold and a 6 and ⅔ acres was sold.

Mr. DUNLEVY: Describe that five acres and those six and two-thirds acres.

A. It is part of the subdivision there (indicating) in the south-west quarter of section 14.

Q. Now, is there any other sale further than that?

A. Yes, sir; directly north of the Midway Pleasance and directly east of the west part of the South Park, in what was known as the Mason & McKichan tract.

Mr. SWETT: How far from the park?

A. All within a mile—perhaps a little less, some portions of it.

Mr. GREEN: The Mason & McKichan tract was not next to the last part?

52 A. It was next to the east part, and it was within three-quarters of a mile of this park that we are talking about.

Mr. DUNLEVY: Of this land?

A. Yes, sir; located right in that subdivision of this 80 acres.

Q. At what price, now, were those sales made in the order you have named?

Objected to.

Q. Give the date and price of the sale of the Dobbins case as near as you can.

A. There were three of them called the Dobbins pieces; now, which one do you mean?

Q. Well, take the three separately, of course. I mean the Illinois Central tract, the Dobbins tract.

A. The Illinois Central tract was sold for 53——

Objected to.

The COURT: Give the date.

A. Some time in 1870, as I gave it last night.

The COURT: Last night you stated it was in the summer.

A. Yes, sir; in the summer or early in the fall. The date is not at my hands, because the old books are boxed up and stored away.

Mr. FULLER: Cannot it be ascertained from the Illinois Central?

A. I presume so; it can be ascertained from our old books.

Mr. DUNLEVY: What did it sell for?

Objected to, overruled, and exception.

Q. Was the price fixed prior to the drawing up of any papers?

53 A. I shall answer this, although I do not remember of it. I never made a transaction that the price was not agreed upon before the papers were drawn up.

Q. State how long your negotiations were pending when the property was sold and when the papers were executed.

A. I cannot give the dates outside of 1870; some time in the early portion of that year; that is the best of my recollection without referring to any papers.

Objected to, overruled, and exception.

Mr. GREEN: Was the agreement for this sale by the Illinois Central to Thomas S. Dobbins in writing?

A. I don't think it was made to Thomas S. Dobbins originally.

Q. Who was it made to?

A. I think to one Robert S. Wilson; that is the best of my recollection.

Q. Was that in writing?

A. My answer is, it must have been; but I do not know any further than the fact that I presume it was.

Q. Was there any deed made at that time by the Illinois Central or was it simply a contract?

A. It was a contract, I think.

The COURT: You object to this on the ground that the property was benefitted by the location of a park; that is one of your objections.

54 Mr. GREEN: Yes, sir; but we — not got to that point yet. They have not introduced the evidence to show at what price it was sold.

The COURT: In a case like this I do not think they are bound to call for the original contract, if the witness remembers the fact. Did the sale occur and does he remember the amount? He may state that without bringing in a contract. You can cross-examine him and bring it all out if you like.

Mr. FULLER: When did Dobbins come in here?

A. Why, I think he came in 1870 under the contract.

Mr. DUNLEVY: What was the price?

A. It was sold to Judge Wilson for the sum of $250,000—the 53 acres.

Mr. THOMPSON: How many acres?

A. 53 acres. 24 acres adjoining the park and 16 acres that are two blocks off, and 13 acres one block away.

Mr. SWETT: At how much?

A. $250,000.

The COURT: What is this price now?

A. 24 acres adjoining the park?

The COURT: 24 acres abutting on the park?

A. Yes, sir.

The COURT: And how many acres on the other?

A. 16 acres, commencing one block north of the park. The 13 acres within two or three or four blocks—three or four block of the park.

The COURT: They sold for how much?

A. $250,000.

55 The COURT: $250,000?

A. Yes, sir.

Mr. DUNLEVY: The next piece, Mr. Layton, when was that sale made and for what price—that 6⅔ acres that you spoke of. Go on and describe that from the map?

A. I cannot describe each one of those blocks. It was in section 14. There is an 80-acre tract lying in here (indicating). It is the south 40 of that 80. One of those 6⅔-acre blocks was sold.

The COURT: When?

A. I cannot tell which block.

The COURT: But when was it?

A. Some time in 1870.

The COURT: About the same time as the other?

A. Probably, but it may have been before. It was sold to Mr. Layton and to Mr. Honore and two or three other gentlemen the southwest quarter section 14, but I cannot give you the block.

Mr. DUNLEVY: It is either one of these three blocks.

A. It is either one of these blocks there (indicating).

The COURT: How far from the park?

A. From ½ to ¾ of a mile. That tract is west of the park that we are talking about.

Mr. DUNLEVY: What did they sell for, Mr. Layton?

The COURT: A mile or three-quarters southwest of the park, he says.

A. I said west of the park in controversy; that is my remark exactly.

56 Mr. FULLER: It was on this boulevard leading from one part to the other.

The COURT: Yes, I understand.

Mr. DUNLEVY: Give the price at which that sold in the summer, or fall of 1870, as you have mentioned.

A. I think $4,000.

Q. For a block, or $4,000 per acre?

A. $4,000 per acre.

Mr. SWEET: That is this 6⅔ acres?

A. Yes, sir.

Mr. SWEET: And $4,000 per acre?

A. $4,000 per acre.

Mr. DUNLEVY: Now, you may take the next piece that you mentioned, that you know of as a sale, describe it, give the price at which it sold, and the time.

A. Then we made sales in the northwest quarter of section 14, in what is known as the Mason & McKichan tract.

The COURT: What time?

Mr. DUNLEVY: Confine yourself to the fall of 1870 or early in 1871.

A. I think the deed passed some time in 1871—in January of 1871.

Mr. SWEET: When is the contract of sale made?

A. I presume it to be made previous, probably in 1870, for all I know.

The COURT: Do you know—you say you presume?

Mr. SWEET: Give your best recollection.

A. I cannot give the date, except by referring to the books.

The COURT: Do you know that there was a previous con-
57 tract of sale? Do you know that the deed was not made at once?

A. I do not think it was.

Mr. THOMPSON: Did you make the sale?

A. Yes, sir.

Mr. SWEET: How much is the tract of land?

A. There was two sales made by some party and they covered nearly 40 acres of the west half of the northwest quarter of section 14.

Q. How far from the park?

A. This park—this tract of land?

Mr. DUNLEVY: How far from this 80 acres in controversy?

A. The east line of the subdivision lies three-quarters of a mile west. These lots that were sold in that 40 acres comprise lots in all the blocks of that 80 acres—part of this block (indicating) and part of another block; it was a half interest in the whole 80 acres that was sold.

Mr. SWEET: How much?

A. Half interest in the whole 80.

Q. At what price?

Objected to.

A. The deed is passed in January, I think. I have referred to that memorandum, and think it was January 27th, 1871.

The COURT: State, as near as you can, how long before the deed was passed — the contract of sale was made, if it was made previously?

A. I cannot do that with any certainty. It might be one month, two months, or three; probably more than one.

58 The COURT: You think it was at least a month before?

A. Yes; I have no doubt the contract was made some time in 1870.

The COURT: You can go on.

Exception by defendants.

Mr. DUNLEVY: At what price?

The COURT: This was an undivided half of 40 acres?

A. No, of 80 acres.

Mr. THOMPSON: It was not an undivided half; it was a divided half of 80 acres.

A. It is my recollection that what was left of an undivided interest, and it is my recollection that the whole of the section was left.

The COURT: You do not remember the amount?

A. I am trying to refresh my memory. I think it was about $4,900 an acre.

Mr. FULLER: Mention the parties.

A. Mr. Dobbins was the purchaser.

Mr. DUNLEVY: Who was the seller?

A. Mr. McKechan.

Mr. STORRS: Was that the northwest quarter of section 14?

A. No, sir.

Q. What was its description?

A. I say it was an undivided half interest, or nearly so, of the west half of section 14.

Q. How far from the property in controversy?

A. The east line of the subdivision is just three-quarters of a mile.

Q. In what direction?

A. Well, the tract line——

59 Mr. THOMPSON: I object to the cross-examination of the witness.

Mr. DUNLEVY:

Q. Mr. Layton, when you say an undivided half, is there another piece there, of the sale of which you know, anywhere in that neighborhood, about that time, in the summer or fall of 1870?

A. Yes, sir; some of this same property was resold within a month, or the month of February, 1871.

Mr. FULLER: Well, that is not admissible within your honor's rule.

The COURT: Yes, he says in February. This property is the 27th of August; that would be within six months.

Mr. DUNLEVY: Do you refer to the deed there, or to the contract?

A. Well, that sale——

Mr. GREEN: What question are you answering now?

A. About the price.

Mr. DUNLEVY: State the price at which the land you have just described was sold.

Objected to, overruled, and exception.

A. It was sold for $600 a lot.

Q. How many acres were there, and how many lots?

A. Well, there were, I think, just 5 acres in a block.

Q. And how many lots in the five acres?

A. 50; that is 10 lots to the acre; six times ten is $6,000.

Q. $6,000 an acre there?

Mr. FULLER: By the lot?

A. Yes, sir.

60 Mr. DUNLEVY: Are there any other sales in that neighborhood, made at that time, of which you had knowledge at the time, anywhere within that same neighborhood?

A. There was another sale of a block of ten acres, bounded on the north by 52nd street, on the south by 53rd street, on the east by Drexel avenue, on the west by the West Park.

Q. How far, in a straight line, from the property in controversy?

A. I should say just within a mile, as near as I can judge. That is what is called block 10 in Drexel's and Smith's subdivision.

The COURT: How far from the property of the park?

A. Right on the park (indicating). Here is the park right here, and it comes down to this point here, and it lies right here in the park.

Mr. FULLER: It is a mile further from the city?
A. It is pretty near three-quarters of a mile north.
Mr. DUNLEVY: At what price did it sell for?
A. $6,000.

Objected to, overruled, and exception.

Q. $6,000 for the block or for an acre?
A. For an acre.
Mr. STORRS: When?
A. Some time in 1870, as near as I can give it to you.
Mr. DUNLEVY. You may give the name of the purchaser and seller, so that they may look into it.
61 A. The seller, the man for whom we negotiated the sale, was Mr. J. W. O'Dell.
Q. Do you remember to whom it was sold?
A. It was sold to a syndicate of four or five different parties. Mr. Goodsell and Mr. Peck were two of them.
Q. One of the Pecks in town here?
A. He is in town, but I think none of the Pecks that you refer to.
Q. Are there any other sales in there that you refer to that you did not know of at the time, and now refer to?
A. None that come to my mind now.
Q. Were you acquainted with the sales that were being made in the neighborhood of this property about the time of August, 1870, and the prices of that property—the prices that the property bore there generally?
A. Yes, sir.
Q. Were you acquainted with this 80 acre tract of land, bounded on the north by 59th, on the south by 63rd, on the west by Stony Island avenue, running 80 rods east from Stony Island avenue at the time; do you know that land?
A. I have been there frequently.
Q. Did you know the value of that and the adjoining land located at the time?
A. I thought I did.
Q. Have you any doubt about it; have you generally good ideas of the values in that neighborhood?
62 A. I know I made sales at the prices which are mentioned there.
Q. What was the value of the 80 acres in controversy, marked in red there (indicating map) in lots, or what would it have sold for in the market, in lots, in 1870?

Objected to, overruled, and exception.

The COURT: Let him state what the value of the property was; what was the property worth at the time?
A. I would have to give you a relative value in connection with properties which we sold there.
The COURT: Do you think you know what it was worth in the first place?
A. That is a very hard question to answer.

The COURT: If you cannot answer that you cannot testify here.
A. I know what the pieces were worth that we sold.

Mr. DUNLEVY: We ask your opinion, then; judging from your knowledge, what was this land worth?
A. From its relative locality to the piece sold north of the park there.

Objected to. Objection sustained.

Mr. THOMPSON: What, in your judgment, was that piece worth?

Mr. DUNLEVY: With the knowledge which you have acquired of the value of the property in the neighborhood, what would it sell for in the market?
63 A. My judgment is it was worth from 15 to 20 per cent. less than that piece we sold to Wilson.
Q. How much?
A. You can figure out the value.

The COURT: Just wait a minute. (To witness:) If you are acquainted with this property you can testify about it. If you have an opinion as to its value about the time, you can give your opinion. Now what, in your judgment, was the property worth at that time?
A. But here has been a park established, and I want to know what my basis is to be upon which I am to answer that question. If it is to be surrounded by a park, or adjoining a park, or opposite to a park, there must be some basis, because values have been made with reference to the park.

Mr. DUNLEVY: There had been no improved park there then?
Mr. FULLER: No park in 1870?
Mr. DUNLEVY: No improved park. They had taken some land which they proposed to improve for a park.

The COURT: Answer it in your own way.
The WITNESS: Well, I answered it when I said I thought it was worth from 15 to 20 per cent. less than by reason of its location to the city than the other piece.

Mr. SWETT. 15 to 20 per cent. less than what?
A. To the piece sold to Wilson by the Illinois Central railroad.
Q. To the Wilson piece?
64 A. Yes, sir.

Mr. DUNLEVY: Then you can figure up what it will be?
A. I can do that very readily.
Q. 20 per cent. less would be how much?

The COURT: The jury can figure that. What do you ..y the sale to Wilson was?
A. The sale by the Illinois Central to Wilson.

Mr. DUNLEVY: Now, in fixi..g that value, you may give the reason that leads you to that conclusion upon which you base your opinion; that is, as to reference to its relations to the city, its availa-

bility for building, selling lots, being divided up into lots; give all the reasons that you have that leads you to that conclusion.

A. Well, my reasons are that those other tracts that I have spoken about had been sold for certain figures, and that property, as well as that of the Illinois Central Railroad Company, lies adjacent to their railroad. Hyde Park was a very promising suburb. Facilities for getting to and from the city were very good on the Illinois Central, and lands in that section were selling very rapidly for improvement. I was a purchaser in that immediate vicinity myself for a homestead, and I had great faith in these lands in the southern portion of the city—we dealt largely in them. As I say, we had made those other sales that I spoke of, and from its relative location to
65 the city and otherwise I based my valuation of property upon that—the knowledge of what have been sold in that locality.

Q. Are your books where you can find them during recess?

A. I rather doubt that; I will make an effort, but I do not know if I can get them. They are in my partner's possession, and he stored them away on Van Buren street, but if I can get hold of the janitor probably I can get them.

Q. Will your books show the date of the sale without reference to the date of the deed—have you put it on your books?

A. No; we put it on at the time of the sale. Of course I am not certain that I can find the books, as they have been packed away for 10 or eleven years.

Q. Was not one of those sales that you spoke of made for Dobbins; do you refer to C. R. Wilson?

A. Yes, sir.

Q. Now, between the sale and the paper, was not Dobbins absent from the city, perhaps in Europe, and you had to send the papers there to be executed?

Objected to. Overruled, and exception.

A. I knew he was in Europe several years about those days, but whether it was just that time or not I cannot state.

Q. He was in Europe two or three years, wasn't he?

A. Yes, sir; he was there two or three years.

At this point court took a recess to 2 p. m.

66 DECEMBER 3D—2 p. m.

The examination of the witness LAYTON was resumed as follows:

Mr. DUNLEVY: Did you get at your books and papers since we adjourned?

A. I got the box open, but did not have time to examine it but just at the top of the box; I didn't find what I wanted to find.

Q. Didn't get anything?

A. Not that gave me any information.

Cross-examination by Mr. GREENE:

Q. How long have you been in the real estate business in Chicago?

A. I came here in '65, in August, and was here until the last of November, in '77, and absent until Sept. 8, 1882, and since that time I have been here.

Q. When you came here did you immediately go into the real estate business?

A. Yes, sir.

Q. Alone or in company with somebody else?

A. In connection with Col. Clark.

Q. And the name of your firm was what?

A. Clark, Layton & Co.

Q. How long did that partnership continue?

A. Until either late in '73 or the beginning of '74.

Q. In '65, '66, and '67 did you have any dealings in Hyde Park lands?

A. I don't remember. There don't anything come to my mind now, especially.

67 Q. When did you first commence to have dealings in Hyde Park lands?

A. My recollection is that in '67 the first park bill was applied for, and we at that time turned our attention in the direction of land in that neighborhood where we thought the park might be located.

Q. What were the first lands that you handled, so far as you know now?

A. I don't remember anything except this special piece that I testified about, which we had more or less to do with as early as '69—some of the pieces.

Q. Prior to '69 did you have any dealings in Hyde Park lands?

A. Not that I now recollect of. We may have occasionally sold a lot or two, but not to any extent.

Q. Were you acquainted with the values of land in Hyde Park prior to '69?

A. I cannot say now. I knew much about them before '69.

Q. Did you keep the run of the movement of Hyde Park property prior to '69?

A. I think I did, as much so as any man naturally would in the real estate business.

Q. You speak about '67, when the first park bill was applied for. Did that talk about the park at that time increase the activity of Hyde Park property?

A. I think it did.

Q. Did it have any effect on the value of land?

A. Undoubtedly it did.

68 Q. Did it increase or diminish their value?

A. Increased it.

Q. Do you know how it was, say *to* the latter part of '68 up to the latter part of '70? What effect did the passage of the park act of '69 have upon the land in that vicinity?

A. A very large effect—to very largely enhance the value. That was from '68 to '70.

Mr. FULLER: After the passage of the act in question?

[A.] ——.

Q. Do you remember when the park act was passed?
A. Yes, sir.
Q. When?
A. Some time in April.
Q. It was submitted to the people then. It was passed in Feb'y, '69?
A, In Feb'y, '69. I knew all the dates at the time; was very familiar with it.
Q. How much, in your opinion, or about how much, has it increased in value the land in the vicinity of the park? You say very largely. Can you give some estimate about how much?
A. I can give you some cases that I know of; lands that were bought and lands that were sold. Did you limit the question as to time?
Q. I am speaking now from the latter part of '69 to the latter part of '70.

Mr. THOMPSON: That question, it seems to me, should be
69 confined, if they want to get at the park act, should be limited to the difference between just before the park act and the park act of '69.
The COURT: Go on and answer the question.

Q. I wanted to know, in a general way, what the percentage of increase was. Was it 200% or 500% from December, 1868, to *to*, say, December, '70, caused by the passage of the park act and the location of the park?
A. I should say——

Mr. THOMPSON: The question is, What was caused by the park act? There might have been other causes. He has limited it to what effect the park act had.
By the COURT: I think you may answer the question.

A. Well, the growth was rapid; I should think at least 100 or 200% in many instances.
Q. You have testified here in reference to sale, by the Illinois Central railroad, of land immediately north of the east part. To whom did you say that that sale was made?
A. My recollection is, the contract first run to Robert S. Wilson.
Q. Was there a written contract between the Illinois Central railroad and Robert Wilson, as you remember it?
A. I understood so. I don't think I ever saw it. I may never have seen it.

Q. Did you negotiate that sale?
70 A. Not wholly; no, sir; we were interested in the second sale from Wilson to Dobbins.
Q. What do you know of your own knowledge of the sale from the Illinois Central R. R. Co. to Wilson that you have testified about?
A. I knew there was a sale made.
Q. How do you know it?

A. I know because there was a subsequent sale make from Wilson to Dobbins.

Q. That is the only way you know?

A. Yes, sir.

Q. You had nothing to do with the sale yourself at all?

A. I don't think I did; I don't know we had anything to do with it.

Mr. STORRS: I move to strike out the testimony of this witness in regard to that sale.

Mr. SWETT: I wish to have the question postponed until I can look at it.

Q. Who did you represent in the transaction about that land that you had yourself?

A. I represented Mr. Dobbins especially in the purchase.

Q. In the purchase from whom?

A. From Mr. Wilson.

A. In the purchase from the Illinois Central by Wilson you represented nobody, did you?

A. I don't think so.

Q. With the sale and the terms of it, or the negotiations between the Illinois Central and Wilson, you had nothing to do
71 yourself at all?

A. Not that I recollect of now.

Q. Whatever you learned about that sale must have been learned afterwards by hearsay from somebody else?

A. I knew of the negotiation.

Q. How did you know it?

A. Through my partner.

Q. Who?

A. Mr. Clark; I knew that the sale was going on.

Q. Mr. Clark, of the Illinois Central?

A. Geo. R. Clark, of my firm.

Q. Did you have any knowledge of any kind about that sale except what your partner told you?

A. I don't think I did.

Q. When was it that he told you about the sale?

A. Some time in '70, my best recollection is.

Mr. STORRS: I renew my motion to strike out the testimony in regard to this sale.

Mr. SWETT: I ask the court to postpone consideration of the motion until I can examine it.

The COURT: You may continue your cross-examination. I will see what Mr. Swett has to say.

Q. In testifying as to the value of the property in question I understood you to say you could only do it by comparison with the tracts you have testified about; am I correct?

A. Partly so.

72 Q. This land of Dobbins, or the land that was sold to Wilson, fronted this proposed park, did it not?

A. Yes, sir.

Q. I would like to direct your attention to the 6 and ⅔ acres you spoke of that fronted the Midway Plaisance. Let me ask you first what this Midway Plaisance was and is?

A. It was a driveway between the West Park and the East Park of the South Park.

Q. These parks consisted of two parts?

A. Yes, sir.

Q. One the West Park and one the East Park?

A. Yes, sir.

Q. This land we are considering is part of the East Park?

A. Yes, sir.

Q. This Midway Plaisance was a connecting boulevard between the East and West Parks?

A. Yes, sir.

Q. How wide, if you know?

A. 600 feet.

Q. This plaisance was a part of the park system and park property, was it not?

A. So I understood.

Q. It was with reference to that proposed plaisance that property was sold on both sides of it after the location of the park?

A. Yes, sir.

73 Q. How much, in your opinion, did the laying out of the plaisance enhance the value on each side of it, between the passage of the act and, we will say, the latter part of '70?

A. I would hardly think as much as it was on the park's parts directly.

Q. Give us an estimate.

A. Perhaps half as much.

Q. Fifty to 100 per cent?

A. Yes, sir.

Q. This wide green strip on the map represents the midway plaisance, does it?

A. Yes, sir.

Q. Will you point out on the map the block of 6 and ⅔ acres that you say you sold or purchased about 1870?

A. I cannot do it. It was one of these six blocks.

Mr. GREEN: That was this corner block that fronted on this midway plaisance and also right on the West Park, did it not?

A. I don't remember how far south that comes.

Q. If it was this corner block, that would have a view direct from this block to the park looking northwest?

A. Yes, sir.

Q. How much, in your opinion, was the value of that block enhance by the location of the park and the midway plaisance in that neighborhood?

A. That fronting on the park, I should value that higher than that fronting on the plaisance halfway between the park.

74 Q. Take this block, it fronted on the midway plaisance, one corner; it was diagonally right across from the main

park; how much, in your opinion, was that block enhanced in value by the location of the park in that situation?

A. Well, 100 per cent. or more.

Q. From who- was that purchased?

A. There were two parties: I think their names were Kinsella and Rowe, so far as I recollect. Whether they owned the property or represented it simply, I don't know.

Q. Who purchuased the property—the 6⅔ acres?

A. It was purchased, I think, by Mr. Clark; he did all that kind of negotiating.

Q. To whom was the deed made?

A. That I don't remember.

Q. You yourself personally had an interest in it?

A. Our firm had an interest; whenever anything was purchased by the firm it went in my name.

Q. You or your firm afterwards subdivided that property?

A. I think so; I think Mr. Clark's name enters into the subdivision on some of the map*h*.

Q. Were there any improvements upon the property when you purchased it?

A. I don't think so.

Q. Were there any improvements on there within a year or two after you purchased it?

A. I don't think so.

Q. Are there any improvements on there now?

A. I have never been there; I never saw the land that I purchased and sold.

Q. Do you know what the terms of payment were?

75 A. No, sir; I don't recollect that.

Q. Do you know whether it was for cash?

A. It was not for cash; I don't think so.

Q. Are you not sure it was not all cash?

A. The great mass of our trades were made on time—the early ones.

Q. Did you live in Hyde Park?

A. No, sir; I lived in the city.

Q. You never lived in Hyde Park?

A. No, sir.

Q. You spoke of purchasing a lot for a homestead; you never made a homestead of it?

A. No, sir.

Q. Where was that property?

A. Over in what is known as Eagandale.

Q. A good deal north of this property?

A. Yes, sir; right west of the village of Hyde Park.

Q. Let us go to McKetcham & Mason's subdivision; you testified in reference to a sale in that subdivision, did you not?

A. Yes, sir.

Q. Can you point out where that subdivision is?

A. That 80 — (referring to map), with all those small lots; the west half of the northwest — of 14.

Q. That subdivision fronted on the park, had a west front on the main park, had it not?

A. Yes, sir.

Q. And the south front on the midway plaisance?

A. I think a half mile on the park and a quarter mile on the plaisance.

Q. Who purchased that?

76 A. There were two purchases and sales I testified about, which do you mean?

Q. The first one.

A. Mr. Dobbins.

Q. From whom?

A. He purchased McKitchum's interest.

Q. That was an undivided interest, was it not?

A. I think so; Mason & McKitchum made the subdivision.

Q. And Dobbins purchased McKitchum's undivided half?

A. What he had left after selling out some lots?

Q. You say that was in 1870?

A. That is my recollection.

Q. Are you sure about that?

A. I testified the deed went from Dobbins in January, 1871?

Q. What, in your opinion, was the increased value of that subdivision by the location of the park and the midway plaisance?

A. Within the limit you gave me before?

Q. Yes.

A. Oh, two or three hundred per cent.

Q. What was — sold at—how much an acre—this undivided half?

A. $4,900, I think.

Q. That by the location of this park was increased in value two or three hundred per cent., did I understand you?

A. Yes, sir.

77 Q. Going back to this land north of the East Park, the Illinois Central land, you say that was afterwards sold by Mr. Wilson to Mr. Dobbins?

A. Yes, sir; so I understand it; that is my recollection.

Q. Under an executory contract or by deed?

A. From Wilson?

Q. Yes.

A. By contract, I think—an assignment, probably, of the contract.

Q. An assignment of the contract; that is your recollection?

A. That is my recollection.

Q. Was that contract ever carried out?

A. With Mr. Wilson and the Illinois Central?

Q. Yes.

A. Mr. Dobbins purchased Mr. Wilson's contract.

Q. Did he ever carry it out; did Dobbins carry out the contract?

A. I think he finally lost the contract.

Q. Did not the property finally go back into the Illinois Central?

A. Yes, sir; certainly.

Q. Now, you have spoken of a sale of ten acres bounded north by 52nd street.

A. Yes, sir; I think so.

Q. And south by 53rd street; that is the same as Oak street on this map, is it not?

A. Oak street is between; it did not run through there.

Q. It was block 10?

A. Yes, sir.

Q. Of Drexel & Smith's subdivision?

78 A. Yes, sir.

Q. That fronted east on Drexel Ave., a continuation of the boulevard called Drexel Ave.?

A. Yes, sir.

Q. And it fronted west on the West Park?

A. Yes, sir; the whole block.

Q. Who was the owner of that land at the time of this sale?

A. I think Mr. Odell.

Q. To whom was it sold?

A. I think to four different parties.

Q. To this syndicate you speak of?

A. Yes, sir.

Q. That was in 1870 or 1871?

A. 1870.

Q. The first part or last part?

A. I don't remember.

Q. Up to the time of the sale what effect did the location of the park have upon the value of the land from, say, December, 1868?

A It affected it largely, the same as that over yonder.

Q. One, two, or three hundred per cent.?

A. Two or three hundred per cent.

Q. Coming to the particular land about which you were asked to give the value, whereabouts is that land?

A. Which do you mean?

Q. The 80 acres you were asked to give your opinion of the value of?

A. It lies fronting west on Stony Island boulevard, south
79 of 59th St., running half a mile, fronting west on what is known as Stony Island boulevard and lying eastward in the park.

Q. It is and was in 1870 a part of the proposed park?

A. So I understand.

Q. It was a part of the park that made the park frontage for this land that was sold by the Illinois Central?

A. So I understand.

Q. Had you ever been on the land in 1870?

A. I had been by it.

Q. In 1870 was this Stony Island avenue open at that time as a public street?

A. I think so.

Q. Well, are you sure about that?

A. No; I am not sure about it.

Q. Well, if it was open, do you know whether it was a macadamized street, as at present?

A. I don't think it was.

Q. It was a mere country road if opened at all?

A. It was macadamized very soon after that.

Q. I am talking about 1870.

A. It may have been that year.

Q. Well, have you any recollection about it?

A. Yes, sir; I frequently went to a piece of property laying clear below South Park, and I used to go down — Cottage avenue cars, and went over on 55th street, and I then got down to where they were hauling dirt—I mean broken stone and rocks—over a system of horse cars, over a wooden tramway. That leads me to think
80 I was down that way frequently because it was the only way to get through, and I was frequently down that way.

Q. I am only getting at your recollection, Mr. Layton, whether Stony Island avenue was an open street, or whether a country road; if open or macadamized?

A. Well, they were hauling the stone up there for some purpose, and my impression is for that.

Q. Was there any other improvements except this macadamizing?

A. Not that I know of. Do you mean in the way of streets?

Q. In the way of streets, sewer, or water, or any other?

A. Oh, there was no sewer or water; there were a few houses down here (indicating).

Q. How many; ten, or twelve, or how many.

A. A dozen; maybe more near Woodlawn station or from there.

Q. Was there a house on Stony Island avenue between 59th and 63rd street, on either side of the street?

A. I don't remember whether there was or not; not of any value at all events.

Q. How recently have you been down there?

A. Well, there may have been houses right here in that subdivision (indicating).

Q. Were there? I am not asking if there were.

A. These were within a block; they were first on that
81 street (indicating), or within a block.

Q. How many were there there?

A. There were ten or fifteen houses within a block or within sight of this Stony Island avenue.

Q. Was there a single house on this subdivision?

A. I think not; I don't think there was.

Q. But you are positive on Robertson's subdivision there was?

A. Yes, sir.

Q. You are positive of that?

A. Yes, sir.

Q. You are positive there were houses on Robertson's subdivision?

A. That is my recollection; Mr. Fitch lived there, and I was in his house.

Q. Mr. Fitch lived in this northeast corner?

A. I do not know exactly the street he lived on, but he lived close to Stony Island avenue, I think.

Q. Now, in this 80, that you testified about the value, was there any difference in the land below high land and low land?

A. Oh, I should think there was.

Q. How much high land was there?

A. In the 80?

Q. Yes, sir.

A. Well, my recollection, from what I saw in passing along the avenue, it was all high on the avenue.

Q. How was it back of that?

A. There was strips of low land between ridges, sometimes a quarter of a mile apart and sometimes less.

82 Q. I am speaking of this particular 80?

A. I do not remember.

Q. You don't know how much high land and how much low land there was in this 80?

A. I know as I passed along the boulevard there was high ground there covered with timber. That is my recollection.

Q. Now, I ask you another question; do you know what proportion of high land and what portion of low land was within this 80 acres of land?

A. Oh, I don't know; no, sir.

Q. So, in making up your opinion of the value, you did not take that into consideration?

A. Yes, sir. I had some in connection with the Dobbins price that I talked about.

Q. Was low land just as valuable in 1870 as high land?

A. Well, we paid just as much up there. We took the low land with the high in the purchase I mentioned—in the purchase of that tract.

Q. I was asking you, was low land worth as much as high land in 1870?

A. Well, in that purchase I tell you we took the low and high together, and in this land I take the low and high together.

Q. In this Dobbins tract how much was high and how much was low land?

A. Well, I should think two-thirds was low.

Q. How low?

A. Very low.

Q. How low?

83 A. Well, covered with water a good deal of the time.

Q. But about this particular 80, you did not know what its condition was?

A. I had not been over it as much as I had the other.

Q. Had you been over it at all?

A. I had been across in this section (indicating), but I don't remember whether I went through from there here (indicating) or how.

Q. Were there any streets in this 80 at that time?

A. There was some roads leading through to the lake here which was very difficult to get through.

Q. On account of low land?

A. Yes, sir. We went through in the winter.

Q. But you can't swear positively that prior to August, 1870, you were ever upon this piece of land?

A. I don't know, as I say, whether I went across that piece or not, but I either went across the upper end of it or through some portion of it in order to get at the property lying east of it.

Q. To render this low land available for residence purposes, or for any other purposes except a pond, it would be necessary to fill it, wouldn't it, to raise it to grade?

A. Yes; drain it or fill it.

Q. If it were only one foot or two, or two or three above the lake, it could not be drained so as to render it fit for residence purposes, could it?

84 A. No, sir.

Q. So, if it were low land it would be necessary to drain it to make it available for residence purposes, wouldn't it?

A. I think so, if I remember right

Mr. GREEN: Now, we have got a map, if your honor please, that shows in a general way this whole thing.

Q. This is the 80 (indicating) we have been talking about?

A. No; right there (indicating) you see it strikes just at the boulevard.

Q. There is the land right there (indicating) that the jury is to value, being part of the east division of the south part; here (indicating) is what is called the west part. Here and here (indicating) are the two grand boulevards running down to this park, this being the grand boulevard, and this, although named on here the Grove Park way, is now called the "Drexel boulevard;" and right in here (indicating) is this 600-feet midway plaisance. In what direction from the land in question is the city of Chicago?

A. It is almost directly north, bears a little to the left.

Q. Now, will you locate upon this map the piece of property that was sold by the Illinois Central Railroad Company to Wilson, that you have testified about?

A. That piece you had your finger on?

Q. Just locate that with your pencil.

85 A. (Witness indicates.) That is the 24 acres, and that is the 16 acres. (Indicating.)

Q. And where is the other piece?

A. Somewhere in these blocks across the railroad.

Q. Now, will you locate the six-and-two-thirds-acre block, one of which you knew of the sale of?

A. Between that line and that (indicating) fronting on the plaisance.

Q. You think it was the block six, cornering on the West Park of the South Park?

A. Yes, sir.

Q. Now, will you locate on that map the McKitchen and Mason's subdivision?

A. Right in here. (Indicating.)

Q. This particular 80 in question does not join right on to the Illinois Central tract, does it?

A. No, sir.

Q. Between the Illinois Central tract and the 80 in controversy there is another tract of land?

A. Yes, sir.

Q. Is that tract of land interposed between the Illinois Central tract and the tract in controversy a part of the park?

A. Yes, sir.

Q. Was it part of the lands located for park lands in 1870?

A. Yes, sir; I think so.

Q. Now, if you will point out the O'Dell land on this map that was block 10?

86 A. That is it. (Indicating.)

Q. Fronted right on the West Park?

A. Yes, sir; right near the entrance.

Q. Very near the entrance of the Drexel boulevard?

A. Yes, sir.

Q. The head of Drexel boulevard is a very large piece of park by itself?

A. Yes, sir; is a park by itself.

Q. And in the scheme was to be improved?

A. Yes, sir.

Q. How much nearer the city is this block 10 than the 80 in controversy?

A. Well, fully one mile; the center of block 10 to the center of the 80. Across here is the 80; right here. (Indicating.)

Q. Isn't it a good deal more than a mile, going by the road?

A. I was talking by north and south.

Q. No, I mean in going from the middle of this 80 to the middle of the other; going by the road.

A. Well, there is nearly a mile that way (indicating) and a mile that way (indicating), if you went by way of the boulevard.

Q. There is no driving across it?

A. No; there isn't; I was giving my estimate by way of a bee line.

Q. How far is it, then, by the road?

A. Nearly two miles.

Q. That of itself would give a value outside of the park business?

A. Yes, sir.

87 Q. Have you any idea how much more valuable outside of the park business the land in block ten was than the 80 in question, on account of its nearness to Chicago?

A. That is a hard question to answer.

Q. Well, is it so hard that you can't answer?

A. There is some difference, of course.

Q. Difference of block 10?

A. Yes, sir; the difference between 10 miles and 12. If one was 10 miles and the other 12 it would be more preferable.

Q. What was the size of the lots in McKitchen and Mason's subdivision?

A. I think there were 24 feet front. Possibly the corners may have been a little variation, and some of them were 102 and 3, and some of them 125 feet deep.

Q. On resale you say Dobbins bought out the remainder of McKitchen's interest in that subdivision?

A. Yes, sir.

Q. And then he made a resale of the lots?

A. Yes, sir.

Q. And when was this resale made; how long after?

A. I think it was the following month.

Q. Did he sell all of the lots?

A. No, sir.

Q. How many did he sell?

A. He sold forty of them.

Q. To the same person, the whole forty?

A. Yes, sir.

Q. To whom was it sold?

88 A. The name doesn't come to me; he was a non-resident; I gave you the name this morning.

Mr. DUNLEVY: You gave the name of "Woolson" this morning.

A. Mr. Woolson is the name I gave; he is the man; yes, sir.

Re-examination by Mr. THOMPSON:

Q. Mr. Layton, just state, please, what knowledge and how you came to have it to receive of this sale that you have spoken of north of the park, you may not state what anybody said to you; just state how you came to know of the sale.

The COURT: He stated before all he knew of it was what his partner told him of it afterwards.

Q. Was the sale made in your office?

A. No, sir; not that I know of, but we knew of the sale.

Q. You knew of the sale?

A. Yes, sir.

Q. How did you come to know of the sale?

A. Through my partner, who was cognizant of the fact; he was talking with Mr. Wilson about it.

Q. Did you know of the sale of Wilson to Dobbins?

A. Yes, sir.

Q. What took place at the time of that sale; what facts took place?

Objected to.

89 Q. Did you have an interest with Wilson or Dobbins?

A. Yes, sir.

The COURT: I think the witness has thoroughly stated what he

knew about the Wilson sale; he says neither he nor his firm, his partner, had anything to do with the negotiating the sale from the Illinois Central Company to Wilson. He said their firm did have something to do with the negotiating the sale from Wilson to Dobbins, and that all he knew of the first sale is what his partner told him; am I correct in that, sir?

The WITNESS: Yes, sir.

Mr. THOMPSON: My idea is this, that in the sale—I don't ask now for the amount—that in this sale from Wilson to Dobbins it was a transfer of that purchase; now, if I make a purchase of you, and you transfer to me your right—this was an assignment of that contract—I know what you gave for it.

The COURT: Then you have the assignment of the contract, and there is no harm done in ruling out this testimony. (To the jury:) I will say to you, gentlemen, that, so far as the testimony relates to the sale from the Illinois Central Railroad Company to Wilson, it is ruled out.

Exception by defendant:

90 Q. Now, when was the sale made from Wilson to Dobbins?

Objected to.

The COURT: He said it was late in the fall of 1870.

Mr. FULLER: That was the Wilson sale.

The COURT: Well, state when it was.

A. Well, it was very shortly after the Wilson contract was obtained.

Q. When was it negotiated?

A. My recollection was it was in 1870.

The COURT: Before the close of the year?

A. Yes, sir; I think so.

Q. I will ask your honor, under the circumstances, what was the consideration for that purchase from Wilson to Dobbins, in which he says he was interested?

Objected to.

The COURT: You may state the contract price subject to the exception.

The WITNESS: I was a party to the second transaction, of which the first was a part.

Q. The sale from Wilson to Dobbins?

A. Yes, sir; and the first contract was a part of the second one; that is the way I understood it.

Q. What do you mean "was a part of it?"

A. That the tract was purchased by Wilson for the purpose of transferring it over to Dobbins; that is my understanding of the contract always.

Excepted to.

The WITNESS: My recollection is that Judge Wilson paid
91 $15,000 for his share over and above what he was going to pay.

The COURT: If you are going to the records refresh your recollection.

The WITNESS: Well, I am giving that as facts, your honor; I don't have to refresh my recollection at all about——

Mr. FULLER: I ask to have that stricken out.

The COURT: This last statement made that Judge Wilson received $15,000 for his share, that may be stricken out for the present. You look at these papers and you can be recalled, if necessary.

Mr. THOMPSON: Now, Mr. Layton, I desire to ask you a few questions on redirect. Did this property in this location you have been testifying about advance after the last of February, 1869, and up to August, 1870, in value?

Mr. GREEN: Which value; which property?

Q. In all of them?

A. Well, there had been an advance, in my judgment, the same as I gave there up to 1870. Just whether it all took place before 1869 or not, I am hardlp able to say.

Q. Can you remember when that property made that advance? Was it prior to the park act? I mean was it immediately on the adoption of the park act, or did it continue to advance up to August, 1870?

A. Well, it was immediately prior to it and for some time after it.

92 The COURT: Do you mean to say that the agitation of the project and the passage of the act had the effect you have stated?

The WITNESS: Yes, sir.

The COURT: Mr. Green, I don't know that you heard what the witness said that the agitation of the project and the passage of the act had the effect to advance the value.

Mr. STORRS: That is to say, he does not mean to say it advanced all by reason of the agitation, and not by reason of the passage of the act.

The WITNESS: That is not what they asked me.

Mr. STORRS: Oh, I know you don't mean to say any such absurd thing as that.

The WITNESS: I did not say so.

Q. What do you say?

A. I say the agitation of the project and the passage of the act caused the advance.

Q. Yes; that the agitation of the matter and the passage of the act together caused this advance.

A. That and the growth of the city.

Q. That all contributed?

A. Yes, sir; very largely.

Q. To the percentages you have indicated?

A. Yes, sir.

93 EDWARD ROBEY was then called as a witness, called on behalf of the plaintiff, and, being first duly sworn, was examined in chief by Mr. DUNLEVY, and testified as follows:

Q. You may state where you reside.

A. Chicago.

Q. What is your business?

A. I am a lawyer.

Q. Where did you reside or where was your residence about 1869 or 1870?

A. On Prairie avenue between 16th and 18th streets, in Chicago, on the lake shore.

Q. Did you reside at any time in Hyde Park?

A. Never.

Q. Were you conversant with the values of land in the neighborhood of 59th to 63rd streets, and in the neighborhood of South Park or this land in controversy; do you know where this land is in controversy?

A Yes, sir.

Q. Were you acquainted with the values of land in that neighborhood about August, 1870?

A. Yes, sir.

Q. Did you buy and sell lands in that neighborhood, or in what way was your knowledge acquired? You are not a real
94 estate agent?

A. No, sir; not exactly. I had had some lands in the vicinity and beyond before that time. A man who was in my office from 1867 to 1870—well, for ten years—lived in the vicinity of this land at this time; from 1867 to about 1877; and the transactions that took place in that neighborhood, the local transactions, took place in my office. I had watched the values, the sales in the vicinity, with reference to keeping posted on the value of property there, before that time, at that time, and afterwards.

Q. Well, in your profession or business what occasion had you, what chains of title, examinations of title of transfers in that vicinity had you?

A. I examined a good many abstracts of title and made some examinations in the recorder's office in connection with them upon the transferring of title or of securities upon land.

Q. As attorney for owners of land in that neighborhood, how many times—how many cases did you represent, if you represented any?

A. It would be hard to jump at it without examining my books as to 1870 for any one department. I represented several hundred parties about that time, I think in 1870.

Mr. FULLER: Taxes?

A. Taxes and special assessments.

95 Q. Of owners in this vicinity?

A. Several hundred parcels in this vicinity not of owners. Some of the owners owned large pieces of land.

Q. And some small pieces?

A. Yes, sir.

Q. Were you or not a dealer yourself in land about that time? You bought and sold on your own account?

A. Yes, sir.

Q. About how largely? I do not care for details.

A. Well, in that vicinity probably 150 acres prior to that time.
Q. Prior to that time?
A. Prior to that time; probably about 150 acres.
Q. Well, how much in real estate generally about the city?
A. I had not dealt very largely.
Q. About 1870?
A. Well, I had not dealt very largely prior to 1870.
Q. Well, during 1870?
A. I did not during 1870 deal very largely. My first large purchase was in 1872.
Q. Now you may state whether you are acquainted with the location of that 80 acres here lying between 63rd and 59th streets and its relation to adjoining properties, and between Stony Island avenue and the lake.
A. Yes, sir; I am.
Q. Have you a knowledge of sales made in that immediate vicinity of land not abutting on the park about 1870?
96 A. I had at the time; knew them as you know what is going on in your neighborhood; knew them as you know the market value is to buy land on.
Q. Well, I want to know whether you had an opinion or a knowledge of transactions there, and, as far as you can, what transactions they were, and what kind of transactions they were, to enable you to be acquainted with the market value of that property in that immediate vicinity.
A. I think I had.
Q. Are you acquainted with this 80 acres, its topography and its nearness to the railroad and other facilities there as compared with the land in the immediate vicinity of which you were acquainted with the sales, so as to be able to compare the two?
A. Yes, sir.
Q. Are you able to form an opinion of what was the value of this 80 acres of land, and you may consider it either in lots —, as a prudent man would sell his property; are you able to form an opinion of what it was worth for all market purposes about 1870--August, 1870?
A. I think so. I think I had an opinion in 1870.
Q. Were you, about that time, or did you about that time examine, put values on the property, or assist in putting valuations on the property for any purpose?

Mr. FULLER: I don't see the object of that.

97 Q. Purposes of the court, partition or appraising, selling for guardians or administrator.

The COURT: Your purpose in this, I suppose, [is] to show he is qualified to give an opinion?
Mr. DUNLEVY: Yes, your honor.
The WITNESS: I had them myself.

Q. Well you may state about how much you did of that kind of work, either as guardian, administrator, or whether it was sold by

order of the court, or for making loans, or for assessing taxes for special assessments. Just give the ground and the basis on which you form an opinion of the market value of land in that respect.

A. I can hardly analyze my business in 1870 to separate it from a former or subsequent years to say how many guardians and sales of that sort I had to examine. During 1870 there was one thing that called our attention to it very strongly, and that was the making of the South Park assessment; the determination of the values at that time.

The COURT: All he wants to know [is] to what extent you had opportunities to be familiar with the price of property, the value of property in the neighborhood of that in controversy.

The WITNESS: I suppose the answer to that would be to a large extent.

Q. How large; in what way were you engaged then that
98 called your attention to those assessments or values?

A. The particular thing that called my attention to it more than anything else that I now think of——

Mr. FULLER: Objected to because what called his attention to it does not tend to show the value.

The COURT: If you want to show that at and prior to August 27, 1870, he knew and often, or perhaps frequently, had occasion to pass judgment upon the value of property down there, he has said that, I think; now do you want to know how often he did that?

Q. Now I want to have him say what kind of work he did in passing his judgment on that—how he came to do it; that is what I have not asked him—and how extensive it was.

Mr. FULLER: How extensive, I have no objection to at all; how he came to, I object to.

Q. What did you do?

A. Prior to 1870 the enquiries were with reference to persons making purchases, who advised with me upon it; during and subsequent to 1870 were in reference to examining the basis of the South Park assessment—whether the assessment the valuation made was right or wrong,

Mr. FULLER: You mean the assessment of property?

A. Assessment of property.

Q. Now, how extensive was that examination—how many clients?

99 A. Well, I think that I could not answer very definitely without looking over my books, but it would exceed 25, I should think, clients in about '70 or '71.

Q. Whether you were then acquainted and have remained acquainted with the comparative facilities of transportation from this town — other lands—with this land compared with other lands.

Objected to.

The COURT: This map shows the approaches to the land, doesn't it? I suppose everybody knows about these boulevards.

The WITNESS: The boulevards were not there.

Q. How near was that to the depot, and the number of depots?

The COURT: Go on; answer the question.

A. I think there were 11 local trains at that time a day each way, besides some that were not local. I was pretty well acquainted with the condition of the roads down that way. I always drove two horses if I went, because one could not draw a buggy fast.

Q. Well, with nearness to the depot?

A. The south end of it was about a quarter of a mile from a station—a little less. The north end was a little more than one-eighth of a mile. I think this land is correctly delineated here; from where the trains sometimes stopped it was one quarter of a mile—from a regular stopping place.

Q. Were you connected with making any subdivision of any property outside sales at that time, or for clients of yours?

100 A. I think not in this neighborhood.

Q. In other neighborhoods, were you?

A. Yes, sir; oh, yes.

Q. About the city, I mean.

A. Yes, sir.

Q. Well, now, you give your opinion, if your information is sufficient to enable you to form an opinion, of the market value of this 80 acres of land on or about the 27th day of August, 1870. I will ask you whether it had a market value in 1870?

A. I have sat here during this discussion. If it hadn't any title to be sold, if it could not be sold, it hadn't any market value.

Q. You mean if it could not be sold because the park had it?

A. Yes, sir.

Q. Any other reason why it hadn't a market value?

A. None.

Q. If the owner had been free to use his land as he thought proper in August, 1870, then would it have had a market value?

Objected to.

A. Yes, sir.

The COURT: Let him give the value of it in 1870, if he can do it.

The WITNESS: To answer that question, I did not mean to withdraw from the function of witness; but I mean I must know, to answer the question, whether it is a piece of encumbered land or not encumbered.

101 The COURT: They are not asking you to speak about the encumbrance; they ask you a fair cash value of that land. You say you are familiar with its location, surroundings, and everything; you have described that; now the question is, what was the fair value of it?

The WITNESS: But the important question is, then, if it was encumbered.

Mr. SWEET continues the examination:

Q. If the owner had a right to sell it—

Objected to.

Mr. SWEET: What is the fair value of this land; what was it at that time?

A. To sell free?

Q. Yes, to sell free.

A. To sell in lots, right through, the market price at that time would be about $25 a front foot for lots of the ordinary size, ten lots to the acre.

Mr. FULLER: Where are you speaking of now?

A. The 80 acres; take the whole of it, some of it would be more, some less. I am speaking now only of the 80 acres.

Q. What was that 80-acre tract of land worth; what could it have been sold for if it had been free and the owner could have sold for at that time?

A. To sell in the ordinary way—to sell the way land was selling in this market——

Mr. STORRS: Wait a moment.

102 Mr. SWETT: Don't wait a moment. (Read the answer, Mr. Reporter.) Now, will you begin again?

Witness continues: It would sell at about $25 a front foot in lots of the size usual in that vicinity, which was in lots in blocks of five acres, divided by streets east and west, streets one-eighth of a mile apart, and north and south streets it would be half that distance apart.

Q. How much would that amount to per acre?

The COURT: How many lots to the acre?

A. Ten lots to the acre.

Q. How many would there be in 80 acres?

A. It comes to——

Mr. THOMPSON (interrupting): That would be $6,250 an acre?

A. Yes, sir; 6,250.

Q. Now, was that, in your opinion, a fair valuation of that land on the 27th of August, 1870?

A. To sell it in lots?

Q. Was it, all of it, in condition to be sold in lots?

A. Yes, sir.

Q. Are you acquainted with the piece down by the shore, the 34 acres?

A. Yes, sir.

Mr. DUNLEVY resumes:

Q. Did you give the basis of your opinion on *what* subdivision?

The COURT: Yes; that is all given.

The WITNESS: I gave the subdivision usually made in that
103 vicinity, 5-acre blocks divided by the east and west streets one-eighth of a mile apart, and the south streets, the north and south streets, one-sixteenth of a mile apart.

Q. I don't know whether you have formed an opinion of the value of the 34 acres on the lake shore. If so (to the court) I would say, your honor, when we speak of "cash" we mean one-quarter cash, the balance to run one, two, and three years on interest.

The COURT: Is that regarded as the equivalent of cash?

A. The usual terms were between one, two, and three years and six or eight per cent. interest.

Q. Do you know this other land?

A. I am acquainted with it.

Q. I ask you if you have formed an opinion of the value of the land, of this 34 acres?

A. I should not put that over $5,000 an acre.

Q. Do you know anything about the value of riparian rights there at that time, whether on the lake shore land was more valuable on account of its riparian rights?

A. I knew there was a market value on that account; it was sought considerably.

Cross-examination by Mr. FULLER:

Q. Mr. Robey, where did you own real estate prior to August, 1870?

A. The first lot I owned was on the north side. I bought
104 it in 1865. I bought a lot on my way to Chicago in 1865 before I came here in Stone's subdivision.

Q. Can't you answer in a general way? You said you were connected with land prior to the year 1870; where was it?

A. You asked where I owned them.

Q. Yes, sir.

A. I owned some lands on the west side, a little on the north side, of Chicago, and considerably south of Chicago aside from my house and lot.

Q. Whereabouts was the property on the south side that you owned prior to 1870?

A. I had part of the title to this 100 acres lying in the park. The 100 acres of the northwest quarter of section 24 west, and adjoining the east 20 acres, and then I had some in section 31, I think, but I am not quite certain of the section.

Q. Where was it?

A. A couple of miles southeast of this. I had another parcel after this.

Q. Had you made any subdivision prior to August, 1870?

A. Yes, sir; that is, I had helped to do it.

Q. For yourself?

A. Not for myself; no, sir.

Q. Had you anything to do with the sale of lands prior to August, 1870?

A. Yes, sir.

Q. If so, in what part of the county?

A. I did. I had something to do with the sale of lands in that immediate vicinity. Most of that which I did sell prior to
105 that time was west of the city.

Q. On the west side?

A. Yes, sir; and it was some of it within the city limits.

Q. How far from here had you anything to do with the sale of property on the south side?

A. I had to do with the purchase; I think it was lot —; I think that is the lot to Nick Nib.

Q. How far was it from this?

A. About a quarter of a mile south of this piece of land.

Q. When was that?

A. That was in 1867, I believe.

Q. Where else did you have anything else to do?

A. (Interrupting.) He moved a house over from this piece of land on to that.

Q. Where else did you have anything else to do with the purchase or sale of any piece of land?

A. I think there was one or two—that is, down there.

Q. Was it as a lawyer?

A. Those were rather as a neighbor than a lawyer.

Q. Where did you live?

A. I lived on Prairie avenue between 16th and 18th streets.

Q. Where did Nib live?

A. On these 80 acres of land, prior to that time, and moved his house too I say.

Q. How far was it from where you lived?

106 A. Six or seven miles. By some roads it seemed very long.

Q. Now, you speak of selling any lots, do you mean making a subdivision of the kind that you mentioned, and then selling it off by the individual lots?

A. Yes, sir.

Q. And, in your judgment, that property, that west 80, was worth half a million dollars on the 27th of August, 1870?

A. I guess you could realize more than that from that property at that time.

Q. On the 27th of August, 1870?

A. You could not realize it in one day.

Q. Could not realize it in one day?

A. No, sir.

Q. You mean by the lot?

A. By the lot, selling it out. The question was, as ordinary men sell out their property.

Q. Do you know how much of that tract was high land and how much low land?

A. I do, very nearly.

Q. Did you know then?

A. Yes, sir.

Q. Had you ever crossed it?

A. Yes, sir.

Q. Where?

A. I went down across here. (Indicating.) That isn't laid out exactly as the road is. That road is about one-third the way from the east to the west side. They were filling up, scraping up that road one time when I went across it in 1869. That was there
107 in the lowest part of the ground. I crossed over on that road, and then went over onto the ridge.

Q. What season of the year was it?

A. It was in the summer. The leaves were on the trees.

Q. July or August?

A. I cannot recollect exactly the season. The leaves were on the trees.

Q. Is the low land here straight across?

A. Not straight across The ridge begins about two rods from this corner. (Indicating.) Then it extends off in this direction (indicating), one turn of it coming off into this ground, while the other leads off to the north.

Q. Now, was there low land between that ridge and the ridge here on Stony Island avenue?

A. Yes, sir.

Q. Were you well acquainted with Hyde Park at the time?

A. Yes, sir.

Q. What system of sewerage did they have, if any?

A. 1870?

Q. Yes, sir.

A. They were first getting to run ditches down through there to get the water off.

Q. In Hyde Park?

A. Yes. I think in 1869 was about the time that they dug the ditches through 63d street, 69, and 70th. The drainage commissioners were at work in 1870.

Q. Did they have any other system of sewerage at that time?
108 A. No, sir. I do not think that there was a sewer in Hyde Park as a part of a system of sewers. They dug the ditches, that which is done, that year?

Q. Did they have gas in Hyde Park?

A. I don't recollect when the gas works were built. They are up at the north end, however, some four or six miles from this.

Q. Nearer the city?

A. Yes, sir. I don't think there was any gas down beyond 47th street at that time at all.

Q. What was the system of supply of water?

A. Dug a well, if you wanted to dig it; if you didn't you drove it in the sand.

Q. They had no water system at that time, did they?

A. None whatever.

Q. Were you aware of the passage of what is known as the South Park act, as it is called?

A. Quite well. I received a telegram that night.

Q. From Springfield?

A. Yes, sir; the night it was passed.

Q. You knew of the vote of the people?
A. I did.
Q. You voted on it yourself?
A. Yes, sir.
Q. For it?
A. Yes, sir.
Q. Then you knew of its adoption?
A. Yes, sir.
Q. Did you know of the passage of the amendatory act in April?
A. April 16? Yes; it was approved.
Q. Was it?
A. Yes.
109 Q. Well, Apriel, 1869?
A. Yes, sir.
Q. Did the South Park act have any effect on land in Hyde Park in the vicinity of the proposed park?
A. Yes, sir.
Q. What effect?
A. It made them a good deal stiffer than they were before, and completed lots of sales that had been dragging.
Q. Was the effect of the passage of the act to enhance the value of the property in the vicinity of the proposed park?
A. The enhancement was from complicated causes, and I cannot select how much this did, and how much the growth of Chicago, but it increased fivefold within a few years before.
Q. The question I ask you, without asking you to define the amount, was the increase due to the passage of the act?
A. Oh, yes; I have no doubt it had, as to very much of it; it was very perceptable.
Q. When did the increase commence?
A. It began the next day after the 24th of February, 1869. Indeed, I think it began as soon as it passed the two houses, and before the approval by the Governor. I know I was looking over some lots.
Q. Do you recollect whether there was any houses on this track (indicating), houses along 63rd street or near there, between Stony Island avenue and the lake, in 1870?
110 A. Yes, sir; there were.
Q. What were they, and how many?
A. There was a house occupied by Captain Lindgren about that time or a little before that on the right-hand side of 63rd street east of Stoney Island avenue?
Q. Can you point it out?
A. It was about there; along in there. (Indicating.)
Q. Any other house in this tract?
A. There was another house. Oh, there was a couple of fishermen's houses down in there. (Indicating.)
Q. Shanties?
A. They were not very large houses. Yes, you could call them shanties. They were rough boards; not plastered. I think one room on the east side was plastered.

Q. How many houses were there on Stoney Island avenue near this tract at this time?

A. I think there was none; that is opposite; there was a little south of it.

Q. A little south of it was Robertson's subdivision?

A. Yes, sir.

Q. How many south of it would you say there were there?

A. I think there were from four to six.

Q. That is in 1870?

A. Yes, sir; I think there were Nibb's and Craig's; Olta's, not Needham; but something like that though, and one or two I do not remember the names of.

Q. Then there wasn't many houses near that in 1870?

A. No, sir; that would be my recollection.

111 Q. I am trying to carry you back as near as I can to 1870; were you employed as attorney in any of the condemnation cases of the South Park Commissioners against that corporation?

A. No, sir; oh, yes, sir; I have been since then.

Q. About when; give the year; it doesn't matter to be exact.

A. I was attorney—to recall the year—I think it was in 1877; was my first connection with it.

Q. You say you had acquired a part of your experience in litigation, which I understood you to say was in reference to taxes and special assessment?

A. Yes, sir; the year that I was actively engaged in the supreme court in this case in 91st Illinois. I was largely in charge of that—adverse to the South Park Commissioners.

Q. Did you not assist at the trial of this cause?

A. I assisted at the trial of the cause, but took no prominent part in it. I was quite unwell that winter.

Q. But you were interested in it?

A. Yes, sir; I did something in the trial. Judge Bailey was connected in it, and I was employed to assist him.

Q. What is your judgment as to the value of the lake shore based on?

A. More upon one or two sales below there, or some sales
112 below there, and sales of the shore property this side.

Q. Well, sales below there—how far below?

A. Across 63rd street; the south half of the section.

Q. What time?

A. 1870 I believe is the time.

Q. Do you mean here? (Indicating.)

A. No; I don't mean the south half of the section; the north half of the section.

Q. In 1870?

A. Yes, sir.

Q. Are you certain of that?

A. That is my impression; that bears on my memory.

Q. That is your impression, and it is under that impression that you testified in giving a valuation here?

A. Yes; that is my memory about that; that it took place in 1870.

Q. Can you recollect how that looked—that piece on the lake shore—in 1870?

A. Yes, sir; I do.

Q. How did it?

A. It was a pretty bad looking piece of land; I have a bigger impression I followed the sand bar up here (indicating), and got caught in quicksand trying to drive up here.

Q. I didn't hear that.

A. I drove on the sand bar, and then crossing to the shore my horse got caught in the quicksand and pretty nearly ruined him.

Q. What was it back here?

113 A. Back of the sand dunes it was marshy ground grown up with bullrushes; water about two feet deep.

Q. Pockets?

A. Oh, it was all water practically, as I recollect it, back of the sand dunes; the bullrushes don't grow in marshy ground, except where the water is tolerably clear; they grew up through the water about two feet deep, perhaps more than that, back of the sand dunes; the sand at the shore formed a shore along the whole length of it; the sand dunes began nearly at the northern end, and were nearly 100 feet wide north, washed clean over by the winds; the south end not quite so wide, but higher, and down at the south side was [a] grove-sort of an island formed by this portion of the west half of the 80 —, and extending down across what is 63rd street, and extending to the shore itself, and there the erro*i*on was cutting it out, so it was sharply defined—precipitous; the sand dunes were, perhaps, 15 feet high there.

Q. Was there any other shanty there?

A. Yes; down that road.

Q. When did you last see it?

A. My impression is that that shanty was there, or part of that shanty; I think part had gone away in 1877, and part of it was there at that time; the site is now under the bed of Lake Michigan; was so two years ago where that shanty was; the grove is

114 gone there too; the sand dunes have gone; the sand hills—

Mr. THOMPSON: Washed away?

A. Yes, sir.

Q. You have said that you considered the riparian rights, Mr. Roby, in giving that valuation of $5,000 an acre; what do you mean by "riparian rights"?

A. The expression is used, I believe, along Lake Michigan to mean the right to run breakwaters or piers out, and the shore current always bears southward, and on the north side of a pier that is put out into Lake Michigan sand will form and will add considerable amounts of land.

Q. And that is what you mean by riparian rights?

A. The right to create.

Q. The ac-retion by running a pier out?

A. Yes, sir.

Q. What is the distance of that piece from where we are now; how far down is it from here?

A. About nine miles; it may be a little less than that. The Illinois Central, I believe, charge for nine miles to Woodlawn station.

Q. What should you say the distance was from that track to the Indiana State line along the shore?

A. Well, the Calumet river at the end of the Illinois State
115 line is a mile and three-quarters, and that is this side of there about three miles and a half to the Calumet river and about a mile and three-quarters from there to the State line.

Q. That would be something over five miles?

A. Yes, sir.

Q. A considerable stretch of bank there on the lake?

A. Yes, sir.

Q. Would you subdivide this and sell it into lots? Did you base your valuation on the theory of subdividing and selling off into lots?

The COURT: Did he say that was worth five thousand dollars an acre; that that was covered by water you spoke of a few minutes ago?

The WITNESS: Yes, sir; there was sand enough to fill the water the way they used it on that lake shore.

Q. Was your valuation based on the theory that this 34 acres was susceptible of being divided up and sold off in lots?

A. I did not base it upon the computation by the lot; I only based it on what I understood to be the prices offered for that kind of land about that time with a view to ultimately making settlements along the shore.

Q. Well, you divide it up into lots ultimately?

A. Yes, sir.

Q. They would be water lots, wouldn't they?

116 A. The sand would have to be level. There were holes along the shore; they were holes with steep sides to them.

Q. Suppose you took it even from the lake; this would have to be filled, would it not?

A. Yes sir; in order to make it ultimately available.

Q. They were strictly water lots as they lay?

A. Yes; and they all staid in the water, too.

Q. Would it require any filling on the 80?

A. No, sir; not in selling it out in lots in the regular way, as they sold it. They got what little filling would be required. There was no measure on that.

Q. Do you regard those lots as simply made to sell, or made to be lived on?

A. To be lived on.

Q. Then you would regard them as lots to be bought as well as sold?

Q. Now you say your recollection is in 1870 they would not need any filling to make them eligible lots for building purposes?

A. Well, as you come to build on them the people drew in five or

six inches — sand on top, and that makes them the ordinary grade.

Q. They don't have cellars?

A. No, sir; my impression is here wasn't a cellar in Hyde Park at that time; I didn't know of any.

Q. Built them on stilts of posts?

A. On posts; yes, sir. You put a plank crossways and set a cedar post on top of it.

117 Q. Now, in relation to sales, you have said you knew of sales as you do about transactions in the neighborhood; have you referred in your own mind to any sale in which you yourself participated as purchaser or seller in 1870?

A. No, sir; I had not.

Q. What did you mean as your knowledge of sales, reports, or how?

A. General reports; yes; as you hear of them, read of them in the newspapers.

Q. Read of them in the newspapers?

A. Yes, sir; they were daily reports of deeds put on the record; newspaper reports of sales as they were made, and keep talking with your neighbors, and keep posted on the market in that way.

Q. You did examine abstracts of title?

A. Yes, sir.

Q. And deeds?

A. Yes, sir.

Q. It sometimes happens that deeds express a consideration that does not pass?

A. Occasionally; it is not very frequent, however.

Q. Were you ever present at any actual sale?

A. In 1870?

Q. Yes.

A. I think I was present at two or three sales that year that I have in memory.

Q. In 1870?

A. Yes, sir.

Q. In what part of the county?

118 A. I mean in that vicinity. I was present at a hundred sales in that year, in other parts of the county that year.

Q. How strong is your impression about that?

A. I was there in Sheridan, Waite, and Chauncy Bowen's when one or two lots were sold in that subdivision.

Q. I ask how strong your impression was; how strong your recollection?

A. Well, I recollect being in this office and seeing a deed handed over.

Q. But you don't recollect being present at an actual sale otherwise than that?

A. That is my recollection of it; I saw some money paid.

Q. Where was Waite and Bowen's subdivision?

A. Fronts on 63d street, and is west of the Illinois Central railroad.

Q. Can you indicate it?

A. These blocks here. (Indicating.)

Q. How far from the proposed park?

A. About one quarter of a mile. The lot that I speak of, that I have particularly in mind, or the two lots that I speak of, one of them was $\frac{1}{16}$ of a mile and the other one-eighth of a mile further.

Q. From the proposed park?

A. From the southwest corner of those 80 acres of land.

Q. That far from the proposed park?

A. Yes, sir.

Q. Was that after the passage of the park act?

A. Yes, sir; you was speaking of 1870. The park act passed in 1869.

119 Q. Have you considered by the value of the 80 from any other stand point than selling it out in lots?

A. If we are buying land to subdivide we figure to buy it for about one-half of what it will sell in lots, if we can. Sometimes we pay a higher price than that when you can't get it for half.

Q. Now, in the sale by the lot of which you have spoken—is it the cash—is your opinion that it could be sold for cash, or is it part cash and part time; and, if so, what time?

A. Oh, if the customer has the money he generally pays in money, and if he don't he pays a portion and a portion on time.

Q. I was asking to get at your view or judgment; did you have in mind a sale of any for cash or not?

A. The question was put to me as they ordinarily sell land in this county, part cash, and part on time; if they make a bargain at the time bearing interest at that time, it was of eight per cent.

Q. Well, what would be your judgment as to what it would sell by the lot on cash down, taken into consideration the property itself and the sale?

A. The price would be about the same. The number of sales would be very much limited.

Q. How long would it probably take to sell of- the lots if
120 the buyer was compelled to pay all cash?

A. Well, it would take much longer than it would to sell in the usual way. I could not figure it out, because I never knew of a subdivision to be sold out all cash—that is, I have known, perhaps, two or three acres subdivided and sold out all cash, but I never knew a large tract to be.

Q. If this were sold as a tract for the purpose of subdividing and then selling it again, then you would say it was worth about three thousand dollars an acres?

A. The sales in that vicinity, at that time, the price would be a little above that.

The COURT: Answer the question.

A. I thought I was answering.

Q. If you sold it as a tract, in your opinion, then, would the value be one-half of what you put it at by the lot; in other words, $3,000?

A. The market value of that property, at that time, would be above $3,000 an acre by the tract.

Q. Well, how much of it by the tract?

A. By the tract—taking it all together?

Q. Yes, sir.

A. About between four and five thousand dollars an acre in August, 1870.

Q. Then you would not make a difference of fifty per cent.?

A. Not on that piece.

Q. Would you on the lake shore piece?

The COURT: He says not on that piece; why?

121 A. Because the speculation in that vicinity, or down through there, was enticing people to buy and pay much nearer the retail price at that time than they usually do when there is no speculative market going.

Q. Was there a good deal of speculation in 1870?

A. Very large.

Q. Down in this vicinity?

A. Yes, sir.

Q. Was that largely produced by the passage of the park act?

A. Not but in a comparatively small degree.

Q. It was very slight?

A. It was comparatively small. There were other motives that induced it, that gave it a start.

Q. That gave the speculative movement a start?

A. It gave it a bulge, a boom; yes; but the advance, I think, was back of there.

Q. When did the boom subside?

A. It began to subside about the 19th of September, 1873.

Q. Never resumed its progress, did it, Mr. Roby?

A. Well, it rallied, so there was a great deal of land sold in 1874 and '5, then we began to get squeezed tighter and tighter till 1879; we knocked over '79 and began to resume its progress.

Q. Are there any vacant lands down here now?

A. Most of the lands are vacant.

122 Q. Has there been much increase in building in Robertson's subdivision?

A. There have been a great many buildings put there within the past eight or nine years.

Q. And isn't there a great deal of vacant property all through this country in the vicinity of this park now?

A. Yes; there have been a great many buildings built here (indicating) and here (indicating) within two or three years past.

Q. But there is still a very large amount of vacant property?

A. A very large amount of vacant property—room enough for pretty near a million people to live; figure it out, five to the lot.

Q. Do you know, Mr. Roby, whether a good many sales that were then made the property went back to the owner?

A. I think there did; a good many that were then made; I know of a good many that did; I know cases where they had paid two-thirds of the price.

Q. Never mind.

A. I want to explain that last answer. I have said that I know that there did. I want to explain it. They were sold out under trust deeds—deeds that were given for back payments—and in most cases the mortgagees bought them in.

The COURT: Let me see if I understand you. You said, I believe, if you had the property you could have divided it up into
123 lots and sold this land $25 a foot?

A. About that on the acreage.

Q. Do you mean to say now that you think you could realize money out of that at that rate?

A. Oh, yes; there is no question upon that, sir.

Q. On all that property?

A. There is no question on that, sir. The sales that were made, even at auction, we realized that, and about 98 per cent. of the sales made were completed and paid over by the people that were buying lots.

Adjourned to 10 a. m. December 4, 1884.

124 DECEMBER 4, A. D. 1884—10 o'clock a. m.

HENRY J. GOODRICH was then called as a witness on behalf of plaintiffs, and being first duly sworn was examined in chief by Mr. SWETT, and testified as follows:

Q. What is your full name?

A. Henry J. Goodrich.

Q. Where do you reside?

A. 133 Drexel boulevard.

Q. How long have you resided there?

A. I have lived in Hyde Park about eight years.

Q. What has been your occupation for the last ten or twelve or fifteen years?

A. In the real estate business.

Q. Where have your operations —; what part of the city have your operations covered?

A. Well, generally in the southern part of the city and in Chicago, and in Hyde Park lately.

Q. Have you in your operations embraced Hyde Park?

A. Yes.

Q. Do you know the land where South Park, as we term it, is located?

A. Yes, sir.

Q. When did you first commence to turn your attention to the value of real estate there in various ways?

A. I went into business in 1865, '69, and '70.

Q. Have you continued in the business ever since?

125 A. Yes, sir.

Q. In what way have you had business which would teach you the value of real estate there?

A. Well, in selling property and in the management of real estate.

Q. Have you ever had occasion to value property there for other parties?

A. Yes, sir.

Q. When did you begin to carry on or to do business—the valuation for others?

A. Well, about a year after I went into business, I should judge.

Q. When did you begin?

A. I should think about the year 1866.

Q. For what parties have you made valuation since that period?

A. Well, for clients, for attorneys, insurance companies—various parties.

Q. About how many valuations have you made in the vicinity of this park altogether of that kind?

A. Well, I don't know.

Q. Well, give the best estimate of judgment you can.

A. Well, I would not know how many. I know that every year I have valued property there. When I have not sold it I have had property for sale there, and I never have kept any particular account of the number of valuations made.

Q. You have been making valuations there more or less since 1866, in that neighborhood?

126 A. Yes, sir.

Q. Now what is the purpose of these valuations?

A. Sometimes they were for loans; sometimes they were for parties who were buying, and again they were for parties who wished to know what their property was worth.

Q. Now, assuming that a man was going to make a loan, how would he come to you? Explain the mode of doing business.

A. The usual way was—they make a written valuation; two or more brokers signed a paper giving the valuation.

Q. Would you be one of the brokers?

A. I have been; yes, sir.

Q. Now what would you do in reference to the valuation? Would you go upon the property if you did not know it personally?

A. Always, unless we knew it personally.

Q. You always went upon the property unless you knew it personally?

A. Yes, sir.

Q. And you would return to the party that written valuation?

A. Yes, sir.

Q. Now I understand that has been — for loans; that is one of the purposes?

A. Yes, sir.

Q. And a gentleman from the East might write to know the valuation of land he has down there?

A. Yes, sir. When a person applied for the valuation they

127 seldom told us what they wanted it for. They simply want the valuation of the property.

Q. And what would you do?

A. I would value the property and charge them for the valuation.

Q. You were employed regularly to do this business, were you?

A. Yes, sir.

Q. And paid for it?

A. Yes, sir.

Q. Now have you ever dealt in real estate—that is, bought and sold real estate—in this vicinity?

A. I have been interested in property there. I have bought property for others—that is, in Hyde Park. I have bought and owned property there, and I have sold property for others.

Q. How extensively have you bought for others?

A. Well, there must have been in the business with the old firm of Warren & Goodrich—and then I succeeded it—at least—well, several millions dollars' — of property passed through our hands, as agents, from the time I went into business to 1871 or '2.

Q. Now in what other way, except purchasing and selling and valueing have you had to do with real estate there—buying and selling and valueing—what other ways than those?

A. Well, I have examined titles of property there; I have assisted in perfecting titles; in a general way, whatever came into the office.

128 Q. Were you ever president of the board of trustees of Hyde Park?

A. I was one term.

Q. What period did that cover—one year, or what year?

A. 1882. It was two years.

Q. During your connection with the presidency of that board did you have occasion to pass upon or value real estate in any way in that vicinity?

A. I don't remember, excepting a very few cases.

Q. Was there any system of drainage under operation at Hyde Park?

Objected to.

Q. What sales do you know of in 1870 that you made yourself? Taking that as a map of a portion of the east shore, do you know of any sales that occurred in there or in that general vicinity that you had to do with yourself?

A. In 1870 there were one or two sales in Waite & Bowen's subdivision that was made, or rather that we furnished customers—parties that purchased there; and there in this subdivision—Robertson's subdivision—there were sales made there that I was cognizant of the fact, as I was indirectly interested with a sale made there by Mr. Fitch; that is, he and I had some transactions together by which I was to receive some money after the transactions were closed.

129 Q. Now, let me—limit yourself to these three places; point out where any one of those sales were.

A. I do not know as I can point out the sale. I can state that the party who bought—his name was McMahon or Mr. Bowen.

Q. About whereabouts was it?

A. I do not remember.

Q. It was in this subdivision?

A. It was in that subdivision.
Q. When was that sale?
A. I think it was, to the best of my recollection, in 1870.
Q. What part of 1870?
A. I think in the summer of 1870.
Q. How much was sold?
A. I think only one lot.
Q. What was the size of that lot?
A. It was 50 feet.
Q. What did it bring?

Objected to, first, that it is not property similarly situated; second, that the sale of a single lot is no criterion by which to judge of the value of an acre [of] property; and the third objection I have is that he has not located the lot, and until he locates the lot and tells us what lot it is, so we can know something about it, it is not proper that he should state what the price was at which he says it was sold.

The COURT: Where was it?
The WITNESS: I can give the circumstances.
130 The COURT: Indicate the particular neighborhood or locality.
A. I should judge it was south of 63rd street; it was west of the Illinois Central Railroad Company, and it was east of Woodlawn avenue.
Mr. SWEET: Now, let us get this: That is the Illinois Central (indicating)?
A. Yes, sir.
Q. It was west of that?
A. Yes, sir.
Q. It was south of 63rd street?
A. Yes, sir.
Q. And east of Woodlawn avenue?
A. Yes, sir.
Q. Now, is that portion which was laid off in lots south of 63rd street in the map presented to you and east of Woodlawn avenue Bowen and Waite's subdivision?
A. It is.
Q. Now, what part of that subdivision was it as near as you can remember?
A. I will state the circumstances.
The COURT: How far was it from any of this park proper?
A. Well, it is inside of half a mile.
The COURT: Well, I will let him answer it subject to objection and exception.
Q. Now, you can answer that question. What did that 50 feet bring?
Mr. GREEN: We don't want this to go in. It is objected to. He don't actually know of this sale himself. We want, of course,
131 what he knows, not what he sent somebody and heard of it afterwards.

Q. Do you know of this sale?
A. I do.
Q. How much did this lot bring?

Objected to.

The COURT: How do you know of the sale? You may ask him now what knowledge he has; how he acquired this knowledge?

Mr. GREEN examines the witness:

Q. What personal knowledge, Mr. Goodrich, have you got in reference to this sale that you are testifying about?
A. I received a commission for the sale of the property. The property was not on the firm's books or upon my own books, but the party bought there of Mr. Waite and I received my money through Mr. Waite.
Q. Did you have anything to do with the closing — that sale at all?
A. No, sir; not in closing it.
Q. Were you present in the negotiations between the buyer and seller?
A. No, I was not.
Q. Did you see the deed or agreement for that lot at all?
A. No, sir; I did not.
Q. Did you see any of the money paid; any of the purchase-money?
A. I do not remember as I did.

Then we object.

Mr. SWEET continues:

Q. How did you receive a commission—from whom?
132 A. From Mr. Waite.
Q. What was that commission on; was it on the price?
A. It was on the sale they had consummated.
Q. Well, was it on the amount of the proceeds of the sale?
A. I inferred it was; it was the rule.
Q. Did Mr. Waite at the time tell you of the sale at the time of the transaction?

Objected to.

The COURT: Was Mr. Waite the seller or the purchaser?
Mr. GREEN: Neither.
Mr. DUNLEVY: Mr. Waite was the seller.
Q. Is that the gentleman, Mr. Waite?
A. That is the gentleman over there.

The COURT: Now, I think, under the circumstances, Mr. Swett, it is fair to exclude this; it can do you no harm, and we can get at the exact facts.

Q. Do you know anything of this except what Mr. Waite told you?

A. Well, I don't know that Mr. Waite ever told me anything; I know that I went over to his office and received the money.

Q. What was that money; was it a certain percentage on the sale?

A. Why, certainly; it was the commission.

Q. A commission of percentage on the sale?

A. Yes, sir.

Q. How much commission did you receive?

Objected to.

133 The COURT: It amount simply to this: Here is a witness who professes to speak of a sale; he knows nothing of the sale, except the fact that he received commissions at a certain time upon what he was informed was the price paid or agreed to be paid.

Objection sustained. Exception by plaintiff.

Q. Now, do you know of any other sales in this vicinity?

A. I know the sale that took place in August, I think, it was of, 1870—of an auction sale that took place in Robertson's subdivison 28 acres or a little more.

Q. How many lots were sold at that sale?

A. Well, less than 20.

Q. How much less than 20 lots?

A. I don't remember; I remember that we thought the property was selling for less.

Mr. GREEN: No matter what you thought.

Q. How many lots were there; about how many?

A. Well, I say less than 20; I know there was; there could not have been over 20 lots sold.

Q. Well, what is the number that you will fix as the nearest in your recollection to the number of lots sold?

A. Well, twelve.

Q. Twelve to twenty; would you put it between the range of 12 to 20?

A. Well, I will say I was sure there was 12.

Q. What is your best recollection?

134 A. I know there weren't 20 sold.

Q. Now, who sold them?

A. William A. Butters & Co.

Q. Where were they sold?

A. They were sold in his auction rooms on Randolph street.

Q. Was the property advertised?

A. It was.

Q. Before the sale?

A. Yes, sir.

Q. Where was the property located?

A. In Robertson's subdivision.

Q. How far was that from this 80 acres in question?

A. Well, a portion of it was on Stony Island boulevard.

Q. Where is Stony Island boulevard?

A. That is the line. (Indicating.)

Q. Where does Stony Island run in reference to lots?

A. It runs on the east side of Robertson's subdivision, and on the west line of the park system.

Q. How far is that tract from the 80 acres in question?

A. Well, it is almost adjoining; that is, the northeast corner of that touches the west corner of that (indicating), with the exception of these streets.

Q. Where did you say were those lots?

A. They were scattered. I think there were some sales made in Stony Island avenue.

The COURT: That is, fronting the park property?

135 A. Yes, sir.

Q. I will ask you what the lots brought?

Objected to for the reason it isn't sales of similar property; second, sales by lot are no criterion of sales by acre; and, third, this witness does not know anything about whether these lots sold there were ever taken or closed.

The COURT: He says here was a sale which was advertised; he was present; it was an auction sale, and they bid these lots off. Now, I think that is evidence they may give to the jury. You may cross-examine. He may know nothing else. That goes in as the opinion of those that bought the property there.

Exception by defendant.

(Question repeated.)

A. To the best of my recollection they brought from 15——

The COURT: When did he say this was?

A. This was about the last of August.

Q. What year?

A. 1870.

Q. Please state the amount the lots brought.

A. To the best of my recollection, some of them brought as low as $15 a foot and some of them as high as 20 or 25 a foot.

Q. How much would that be an acre, averaging them at 20?

A. I don't think the average was 20 there.

136 Q. What was the average, if you have a recollection?

A. I have this recollection, that Mr. Fitch consulted with me in regard to stopping the sale, as it was not bringing what he thought the property was——(interrupting)—That is objected to.

Q. What did this average?

A. Well, it was less than $20 a foot.

Q. How much would $20 be to the acre? How many feet were there to the acre?

A. I think those lots were 100 and some of them 180 feet deep and 50 feet front. There is less than 100 in the 28 acres. They vary in size, the lots do.

Q. How much would this be?

A. They are not in a regular shape.

Q. Figuring it out and apportioning it to the acre, how much would that be?

A. Well, taking out and allowing the streets 50 feet would be a little less than a quarter of an acre, as they are laid out on that boulevard.

Q. How much would this be per acre?

A. A little over $700 a lot, $2,800 to $3,000 an acre.

Q. $3,000 an acre?

A. Somewhere in that vicinity.

Q. Now, do you know any other lots. I will ask you first whether this sale was permitted to go through for all of the land advertised, or whether it was stopped?

137 Objected to. Objection sustained. Exception by plaintiff.

Q. Were you connected with the laying out of this subdivision from which these lots were sold?

A. No, sir; I had nothing to do with the laying out of the property.

Q. Do you know of any other sales in that vicinity?

A. I know of sales that took place in the MacKichen and Mason subdivision.

Q. How far is that from the land in question?

A. About one mile.

Q. When did the sale take place?

A. Well, in 1870 and 1871; another I was conversant with.

Q. What sales took place in 1870?

A. Well, there was four lots sold in block 4 or block 6; block 4, I think, MacKichen's subdivision.

Q. At what price did they sell?

Objected to.

The COURT: Let him state what he knows of these sales first.

Q. Do you know of this sale?

A. I do know of it.

Q. Please state what price it brought?

A. There was 94 feet; 24 feet front, the lots were.

Q. You may make the figuring yourself, so as to give it by the acre, if you please.

A. These lots are figured about ten to the acre.

Q. Well, how many did four bring?

138 A. It was either 2,000 or 2,200 dollars.

Q. How much would 2,000 a lot for the four lots —?

A. For the four lots?

Q. You mean 500 dollars apiece and a fraction?

A. Yes, sir.

Q. How much would that be?

A. Well, these lots are ten to an acre, and that would be four-tenths.

Q. How much is it?

A. They brought 2,000 or 2,200 dollars, the four lots.

Q. How much would that be per acre, is my question?

A. Well, I should say $5,000 an acre, a little over.

Q. How far is that from the park?
A. Well, it is nearer the other park.
Q. How near is it to the other park?
A. Well, it is less than a block.
Q. From the park which lays west?
A. Yes, sir.
Q. Do you know of any other sales? I will ask you whether you have conversed with other real estate men, and know generally, without knowing particularly, of their sales?
A. I knew all the time at the time of several sales that were made in MacKichen's subdivision, parties that purchased there. Gen. Logan purchased a block in there.

Mr. GREEN: That don't tend to give a value.
The WITNESS continues: About that time the purchase was made.

139 Q. Do you know what Logan paid for his lot?

Objected to.

The COURT: He is not stating the amount; he is asking you if you know.
The WITNESS: I know that he purchased it; yes, sir.

Q. Do you know what he paid for it?
A. I don't know; I don't remember the figures he paid for it.
Q. Now, do you know from talking with other real estate agents about their sales, the neighborhood, town talk, of sales?
A. Yes, sir.
Q. Now, from all these sources of information, I will ask you whether you think you are a judge of the value of this real estate the 27th of August, 1870?
A. Yes, sir.
Q. I will ask you what, in your opinion, is the value of the 80 acres in question in this case?

Objected to.

[A.] You don't mean that.
Q. What was — on the 27th of August, 1870?
A. $5,000 an acre.
Q. Are you acquainted with the strip on the shore?
A. Yes, sir.
Q. What, in your opinion, was that worth on the 27th of August, 1870?
A. About $1,000 an acre more.
Q. That is about 6,000?
A. Yes, sir.

140 The COURT: Which was *it* 5 and which was 6,000 dollars?
Mr. SWETT: The 80 acres was 5,000 and the small strip 6,000.

Q. Now, do you consider that a fair estimate of the value of those two tracts of land?
A. I do.

Cross-examination by Mr. GREEN:

Q. Do you know of any sales of Hyde Park property, in the vicinity of South Park, in 1870?

A. No, sir; I don't remember any. In 1865 I went into business; in July or August, 1865.

Q. Then you don't know of any in 1865?

A. I don't recollect of any in 1865.

Q. In 1866?

A. I don't recollect of any in 1866.

Q. In 1867?

A. I don't recollect any in 1867.

Q. 1868?

A. I don't remember the date, but I remember when this was purchased here (indicating), this property on the corner of 63rd street and Stony Island avenue; I think that was in 1868.

Q. Purchased by whom?

A. Well, it was a McKee — bought it.

Q. From whom?

A. I do not remember whom he bought it of.

141 Q. You think that was in 1868?

A. I think it was in 1868.

Q. What part of the year?

A. Well, I don't remember; but I think it was in 1868.

Q. Do you know what he paid for it?

A. No; I don't remember; I have seen the abstract and examined it for the estate, but I won't say what it was sold at; I didn't know the circumstances connected with it.

Q. Have you got any idea what it it was sold at?

Mr. SWETT: I object to the idea.

Question withdrawn.

Q. Have you any recollection at all about the price that was paid for that land when it was purchased?

A. No.

The COURT: Which land was this?

Mr. GREEN: It was land opposite the land in question.

Objected to.

The COURT: You introduce a man for values, and you say to the jury, here is a man whose opinion you may safely take on the subject. It is perfectly legitimate that they should cross-examine the man and let the jury know just how far his opinion is trustworthy; everything of that kind.

Mr. SWETT: I concede that is open; but is it open for

142 them to prove prices two or three years before this transfer for the sake of getting prices in here?

The COURT: You are getting pretty close to this question; have been introducing what the supreme court of Illinois say in passing on the 8th and 9th instructions for appellant in the Cook case sec-

tion substantially you cannot. (Reads from 61 Ills., p. 124.) As I understand it, all these sales of which you speak were all lands adjacent to this part and subject to assessments.

Mr. DUNLEVY: In the neighborhood; not adjoining.

The COURT: Well, they were lots subject to assessment on the theory that they were appreciated by the park. Now, if you go on to show that these very lands were affected by the establishment of a park, they were appreciated in value, they were subject to these assessments, then you are not entitled to the evidence at all, and the court is bound to say now or later that evidence of that kind is not material, and not before the jury. Now, suppose the witness says these particular lands of which he has spoken were assessed for these parks, and they were enhanced in value by the establishment of the park, that was the effect of it, then under the decision of the supreme court of Illinois you are not entitled to these sales.

143 Now, I think I will say that hereafter I think it is the duty of the court, in getting the evidence fairly before the jury, whenever you introduce a witness here as to the sale of adjacent property, and what I mean by adjacent is property that was near enough to be influenced by the park system and property that was assessed to pay the benefits and to pay for the park, and it appears the witness admits that that particular property was benefitted by the establishment of the park, I think I will exclude those sales.

Mr. SWETT: I think that ought not to be decided now, etc.

The COURT: Then the witness ought to say whether that has any bearing on his opinion.

Mr. STORRS——

The COURT: It occurred to me that I could not exclude this evidence except on the assumption that this property was enhanced in value by the establishment of the park. That might be so and it might not be so; and until it appeared I suppose the court would not assume it. Now, if the witness in his evidence admits that was the fact, I think it ought to be excluded.

Mr. SWETT——

144 The COURT: I don't mean to say that I was going to impose upon you the value of the land at any other time than the 27th of August, 1870.

The way this question is presented is just this: It occurred to me yesterday but I let it go on.

You have got a witness here, and you propose to prove by him that on or about the 27th of August, 1870, there were sales—there was a sale of real estate adjacent to this park property, in immediate proximity to it, and that property sold for so much a lot, amounting to, say, five or six thousand dollars an acre. That goes to the jury. Now, for what purpose? Of course, the inference you draw from that is the property in controversy is worth five or six thousand dollars an acre. Now, that is the purpose of this thing.

You say land just outside the park system, and in the immediate neghborhood, perhaps abutting on boulevards near, sold for so much at this time, and therefore our property is worth so much.

Now, you are utterly disregarding, as it seems to me, the law as it

has been decided by the supreme court of Illinois. They say the adjacent sales at that time is not evidence tending to show the value of your property at that time, because this very property
145 was subject to assessment for the park system. It was assessed and benefitted, and for that very reason assessed to pay for park purposes.

Now, don't you take the position that I am compelled to admit this evidence without regard to the supreme court of Illinois. Under this you are not entitled to sales of such property.

In many States you are not entitled to sales at all. Now, this question has been brought before the supreme court of Illinois, and they say it will not do to put in such sales. Now, am I correct about that?

Mr. SWETT: No; your honor is wrong. If your honor will look on page 124——

The COURT: You will have to prove the value of this just as in such States where they do not permit proof of such sales at all.

I shall, as I said, in the future, before I will allow you to introduce evidence of sales of property just outside this park and near it, *I will* require the witness to state whether, in his opinion, that property was benefitted by the establishment of the park.

If he says it was, then I think that evidence is incompetent under this decision.

Mr. SWETT——

146 The COURT: You may go on now and in all legitimate ways prove what this property was worth in August, 1870. They took your property and they are obliged to pay you for it.

You are entitled to the value of your property. There is no doubt about that, but under the rule, as laid down by the supreme court of Illinois, you cannot introduce these sales as tending to show what your property was worth at that time, providing these were sales of property that was appreciated by the establishment of the park.

Mr. SWETT——

The COURT: He has given his opinion of the value of the property; that is before the jury. But, gentlemen (to the jury), this witness' opinion of sales outside of the property in question is excluded.

Excepted to by plaintiff.

The COURT: His testimony as to these sales just outside of the park property.

Mr. STORRS: We wish to make a motion at this point to exclude all testimony that has been introduced in this case in relation to sales adjacent to this property.

The COURT: And I will go further and exclude the testimony of other witnesses as to prices which property sold for just outside the park, leaving in, however, their opinion as to the value of the
147 park property. What I mean is this, you cannot, when it is established that property just outside sold for just so much to the acre, for instance, say that therefore this property was worth the same amount. You cannot institute a comparison of that kind. To that extent it is excluded.

The witness was here withdrawn for the placing of another witness on the stand.

The witness was here recalled and cross-examination resumed by Mr. GREEN:

Q. Mr. Goodrich, were you on these west 80 acres in 1870?
A. I think so.
Q. When?
A. Well, I used to pass across that property and on the lake shore, going to Ainsworth, frequently.
Q. Was there any marsh land in that 80?
A. Well, it is all rather low land—that is, it isn't high land any of it.
Q. Is it all low land?
A. It isn't high land; it is prairie land.
Q. Well, comparing that west 80 with the height of Stony Island avenue, how much of it was as high as Stony Island avenue—the street immediately adjoining it on the west?
A. I don't know what the levels are there, but there is a slight difference. The street is a little higher than the land.
Q. All of it?
148 A. I don't know that it is.
Q. That is just what I am trying to find out, Mr. Goodrich, whether you know anything about it or not.
A. Of course, I know about it.
Q. Well, how much of it was there that was below Stony Island avenue?
A. I say I don't know.
Q. Then you don't know that?
A. I don't know the street that passes there. I know the street is dry, and I know in passing over this land it was dry, too.
Q. I am not asking about the street; I know the street is dry. It graded up. But I am asking you how much of the west 80 was below Stony Island avenue in 1870?
A. Below the avenue. I don't know how deep down you want to go in the avenue. I don't understand the question.
Q. Did you know a street in Hyde Park, between 59th and 63rd, called Stony Island avenue?
A. I do.
Q. Did you know that street in 1870?
A. I knew there was a street there; yes, sir.
Q. Did you ever go over it in 1870?
A. Yes.
Q. Did you know the level of the surface of the top of that street in 1870?
A. No; I hadn't any occasion to ascertain.
Q. Well, you saw it?
A. Yes, sir.
149 Q. Did you see this land in 1870—this 80 acres?
A. Yes, sir.
Q. Now, comparing the level of the low land on that west 80 with

the top of the surface of Stony Island avenue adjoining it, how much of that west 80 was low land and lower than the surface of Stony Island avenue?

A. Well, I don't know how I would know, because there was a ridge there and I could not take a level. I wasn't called upon to do anything of the kind.

Q. Then you don't know, do you?

A. I know it was all good land. I know it was prairie land, and some of it was higher than the others—that was the ridges.

Q. But the low land, was any of it lower than the level of the surface of Stony Island avenue?

A. I don't know as to that. You are asking me a question that I do not think any one would know, unless it was a man that had made a survey at that time.

Q. You don't think a man going there and looking at the land could tell whether one was higher than the other or not?

A. That was not the question you have asked me.

Q. It was.

A. I do not so understand it.

150 Q. Now, was there any other land of that lower than the level of Stony Island avenue?

A. Yes, sir.

Q. How much?

A. Well, a certain portion of it; I don't know how much.

Q. Was there one acre?

A. I won't state the acres.

Q. Was half of it lower than Stony Island avenue?

A. No, sir.

Q. You are sure of that?

A. No; I am not positive on that point; but I don't believe it is.

Q. Was your basis of value given with any reference to low land and high land?

A. No, sir.

Q. Low land was just as valuable as high land?

A. No, sir; I don't think it was.

Q. Then why don't you make a difference?

A. It wasn't called low land, and I take the whole 80 as a body.

Q. You made no distinction between the low land and the high land in your valuation?

A. No, sir.

Q. You make no distinction in value between high land and low ground?

A. I presume a buyer would.

Q. Did you take that into consideration?

A. Yes, sir; I took in the whole 80.

Q. Did you take into consideration the low ground?

151 A. Yes, sir.

Q. How could you when you did not know how much was in the 80.

A. I could judge.

Q. What is your judgment now?

A. A portion.
Q. What portion?
A. A very small portion.
Q. In your judgment there was a very small portion of that that was lower than the surface of Stony Island Ave.?
A. I should judge it might be; I don't know just how high Stony Island Ave. is; we don't gauge land by streets.
Q. Do you think that land three or four feet below the level of the street would be just as valuable as land on a level for suburban residences?
A. No, sir.
Q. Was it as valuable in 1870, 2 or 3 feet below the level of the street in Hyde park, as land on a level with the street?
A. If that was the condition of it——
Q. I am asking you that.
A. I don't know that — was the condition.
Q. Supposing it was?
A. I don't suppose anybody knew it.
Q. These prices you have put on this land are prices to sell to persons who would not go to see the land?
A. I think it would sell better for a man to look at it.
152 Q. How about the lake shore; any low land in the 34 acres on the lake shore?
A. Yes; some low land there.
Q. How much?
A. It was all sandy and shore property.
Q. Any under water in 1870?
A. I presume there was some.
Q. Do you know how much?
A. No; I could not say how much there was.
Q. In fixing your value of that, you did not take into consideration how much of it was under water?
A. I took into consideration the value of park property on Lake Michigan, near Chicago.
Q. Whether it was under water or over water made no difference?
A. It could not be much of it under water; might be some; the shore there is not abrupt; it slants but little.
Q. You say you don't know how much was land under water, and land out of water?
A. No; I could not say just how much.
Q. What was the character of the land that was not under water?
A. It was such land as you could walk upon.
Q. Simply sand?
A. It was sand and shore property, prairie.
Q. Do you mean to say that in 1870, do you swear there was any of that 34 acres that would be called prairie land?
A. I contend the whole of this part of the country is prairie land.
Q. What do you understand by marsh?
153 A. Very low wet ground.
Q. You testify that in this 34 acres there was one marsh, do you?

A. I would not swear there was not any marsh.
Q. How much marsh?
A. It was rather low ground.
Q. Can you tell me how much marsh there was?
A. I could not say just how much.
Q. What proportion of the 34 acres was marsh?
A. I would not swear how much of it was marsh.
Q. So it did not enter into your consideration in fixing the price how much was marsh?
A. I know that property——
Q. Did it enter into your estimate of value when you gave your valuation, how much was marsh and how much not?
A. Yes, sir; all these things entered my mind.
Q. Answer the question; you say that entered into your consideration, and still you do not know how much was marsh?
A. It would not make any difference to me if it was all marsh?
Q. It would sell just as well?
A. To some people.
Q. What kind of people?
A. If you wanted to, but it—I might have sold it to you.
Q. For what purpose could that have been used?
A. Speculators buy such land.
Q. For what purpose, to sell again?
A. Yes, sir; better known to themselves.
154 Q. Was there any practical use to which that could have been put in 1870?
A. I don't know that there was any great demand. I know all property on the shore was sought for.
Q. I ask you whether there was any practical use that shore piece could have been put to in 1870 as it stood.
A. The same as it can now—any purpose that a man might design it for.
Q. What purpose?
A. Some people have an idea property on the lake shore is worth more; some people might have bought it for the same — others, thinking in the future it would rise in value.
Q. What use could it have been put to in 1870 as land?
A. They could put out a pier there and make money in getting the sand.
Q. What could you use the land best for in 1870, exclusive of these riparian rights—the land inside of this 34 acres?
A. Only a matter of speculation, I should judge.
Q. Could it be put to any practical use now, fourteen years afterwards?
A. The same as it could then; people might beautify it; it is according to what it is bought for.
Q. Suggest any use it might be put to?
A. You might put a rolling-mill there.
Q. You would not choose it for a private residence, would you?
A. I would not want to live quite so near the shore.

155 NELSON THOMASON, was then called as a witness — behalf of the plaintiff, and, being first duly sworn, was examined by Mr. THOMPSON, and testified as follows:

Q. What is your name?
A. Nelson Thomason.
Q. What is your business?
A. Real estate dealer and agent.
Q. How long have you been engaged in that business in this county?
A. I have been since 1869 or '70 engaged as an agent. I have been buying since 1866–'67.
Q. That is, from 1866 you dealt for yourself?
A. Yes, sir.
Q. In your dealings have you handled large tracts of property in Hyde Park?
A. I have.
Q. I wish you would give us some general idea, Mr. Thomason, about where, if you can, from either of these maps.
A. I bought 20 acres right there (indicating), and then I used to own this (Indicating.)
Q. 20 acres where?
A. Just south of East Park. Then I used to own that (indicating), which I afterwards sold to Gen. Logan; then I bought that (Indicating.)

156 Q. Then you bought on the southwest corner of the West Park?
A. Yes, sir.
Q. Did you subdivide that?
A. Yes, sir.
Q. Have you had other dealings?
A. I have had several others. I bought this in here (indicating); right here it would be, you know.
Q. Have you made subdivisions yourself?
A. Yes, sir.
Q. And sold out those subdivisions?
A. Yes, sir.
Q. Since what dates—about when?
A. Since I sold it?
Q. No; about when you bought, I mean, and subdivided; when were you doing that kind of work?
A. Well, the largest purchase I made, the next to the largest, was all in 1868. I remember Pittner's subdivision.
Q. How many acres were there in that?
A. 160.
Q. Where was that?
A. The southwest of 27th.
Q. That is just a little south and a little east of the present park?
A. Yes, sir; a little southwest.
Q. And how many acres did you have over on the southwest corner of the West Park?

A. I had 20.

Q. Did you subdivide that?

A. It was subdivided for Baldwich, and I just sold it as it was subdivided.

157 Q. I thought that was Thomason's subdivision?

A. This is here.

Q. I mean there?

A. Oh, I beg your pardon; I bought that and subdivided it—yes, sir—and sold it out.

Q. How many acres did you sell in that operation in that portion of which you say you sold to Gen. Logan?

A. Five acres.

Q. When did you sell that to Gen. Logan?

A. I sold that about, I would say, 1870.

Q. Can you give us the time in 1870?

A. I can remember very well, because it was the year the German war was going on, and in that year I went to California. It was undoubtedly 1870, as the record shows.

Q. What part of the year?

A. I would say about September, just after I returned from California.

The COURT: How close is that?

A. It is block 9.

Mr. FULLER: On the boulevard?

Mr. THOMPSON: No: it is not on the boulevard.

The WITNESS: Oh, no; you could not get anything there.

The COURT: To what extent had this property been enhanced in value, if at all, by the establishment of the park?

The WITNESS: Well, that is a very hard question to answer, Judge.

The COURT: Had it been appreciated?

A. Well, I would not say it had been greatly appreciated
158 by the park system. It had been greatly appreciated by the times. Everything was very speculative here then and property was saleable in 1870.

Q. Do you think at that time this property had been materially enhanced in value by the park?

A. It might a little; not very materially.

The COURT: Well, I will give you the benefit of it to go on the record fairly by.

Excluded. Exception by plaintiff.

Q. At what price did you sell that block to Gen. Logan?

Objected to. Sustained. Exception.

Q. Are you familiar with the location of the east division of the South Park?

A. Of the east South Park do you mean?

Q. Yes, sir.

A. Yes, sir; I am.

Q. The portion that lies along the lake shore and runs out to Stony Island avenue?

A. I am.

Q. What was the condition in August, 1870, of real estate with reference to property lying in that general vicinity? I don't mean immediately fronting on the park, but I mean generally around in the village of Hyde Park and south and west of this property.

A. It was very high, very *easily* sought for, and any one that had any property there could sell it very readily, as almost any real estate gentleman could tell you in Chicago.

159 Q. Was there any real estate auction sale going on at that time?

A. I could not say about that. But you could hardly buy property unless you sold it at a profit.

Q. Now, I will ask you whether property appreciated; the park act was passed in February, 1869. Now, I will ask you, say, taking a month or two after that fact, the park act had passed, and after it was known where it was to be located, or supposed it was known, did property in that neighborhood advance between that time and the summer of 1870?

A. Immediately after the passage of the park bill we found a great many of us well caught. We had all anticipated quite an advance and purchases, and after that came—after the park act had passed—we did not find so many purchasers as we anticipated.

Q. Now, where was it that this general increase took effect; when was it made?

A. Well, it came along gradually. Say about the latter part of—well it commenced, say, in the latter part of 1869 and 1870, then things began to rest again.

Q. And until what time did they continue to rise rapidly?

A. They continued to rise rapidly and did not stop until 1873, except a little lulls right after the fire.

160 Q. What, in your judgment, was the percentage of the rise from, say, May, 1869, up to August, 1870; that is, a year and three months?

A. That is a very hard question to answer. It depends upon where it is, you know.

Q. I mean in this location, right by this, along Stony Island avenue and around this park.

A. Well, that is very hard. It is a general question, and very hard. For instance, I was there buying for myself; I bought as low as I could and sold as high as I could.

Q. Well, was there much appreciation or little appreciation from May, 1869, to August, 1870?

A. Yes; there was some appreciation, but it wasn't so very material around the South Park as it was everywhere over the county.

Q. I am not meaning with reference to park benefits; I mean for any reason was there an appreciation?

A. Well, there was certainly a great appreciation. That is very true. I went along gradually; that is, I say it was not so much in-

creased by the park as by the general speculation all over the country in 1870, for instance.

Objected to.

Q. Mr. Thomason, I wish, if you can, you would make up your mind as to the increase, if you can recall anything—anything, any purchase and sales—anything to give you the idea from, say,
161 May, about May, 1869, to August, 1870. You need not state what it is.

A. I cannot now. In this short time I cannot.

Q. What, in your judgment, was the fair value of that property in question in August, 1870, with the right in the owner to use it as he might see fit, or to subdivide it and sell it?

Objected to.

The COURT: That being his property he had an opportunity to do as he pleased with it. What was it worth?

Q. Did you hear the judge's question? If that was the owner's property delivered to him to do what he chose with it, what was its fair market value, if it had a market value, under such circumstances on the 27th day of August, 1870?

Objected to. Overruled. Exception.

A. I would consider the west 80 acres worth four thousand five hundred dollars an acre; forty-five hundred dollars an acre at least. I would consider it cheap at that.

The COURT: How much an acre?

A. Forty-five hundred dollars an acre, sir; cheap at that.

Q. What, in your judgment, at the same time, and on the same conditions, would have been the fair cash value, market value, of the piece fronting the lake that is in question in this suit, the 34 acres?

A. I would consider that cheap at five thousand dollars an
162 acre, considering the riparian rights and the advantages that it has.

Cross-examination by Mr. GREEN:

Q. Mr. Thomason, when did you start in the real estate business?

A. I started, sir, in 1870; got a license to make sales.

Q. Peddle real estate?

A. Peddle real estate.

Q. In 1870?

A. Yes, sir.

Q. Just the year that we are directing your attention to?

A. Just about the year.

Q. About what time in the year did you start your career as a real estate agent?

A. I don't know; I got a license in the United States court, down in the old building, I remember well. I remember I made a sale.

Q. When?

A. I can't tell you when; about in 1870. I resigned in the army in 1870. That is the reason I know it was in 1870, and before I resigned from the army I got a license from the Government as agent.

Q. As dealer?

A. As agent. Previously I had dealt in real estate.

Q. When were you last on this 80?

A. I was there the last summer.

Q. When were you first upon this west 80?

163 A. I used to go down frequently from the old Tremont House down to South Chicago station, as it was then called, or Calumet, time and time again, on Sundays, and also on other days, to see property, before I ever bought property; I used to go down there very often gunning.

Q. Now, if you will answer my question, perhaps we will get along. My question was, when were you first upon this west 80?

A. Well, that is a thing I can't tell?

Q. Were you ever on it?

A. Yes, sir.

Q. You don't know when it was?

A. I came here in 1857——

Q. Were you on that west 80 in the year 1870?

A. That 80—yes, sir. I haven't the slightest doubt about it.

Q. When in 1870?

A. I could not tell that, what month.

Q. What is the character of that west 80?

A. The character of that is slightly undulating.

Q. By "undulating" you mean ridge and marsh?

A. No, sir; no marsh about it. Not near as bad as South Chicago is to day.

Q. Well, was there any low land in the 80?

A. Yes; some low land.

Q. How much?

A. Well, I could not tell you that.

Q. About how much?

164 A. Oh, I could not tell you that.

Q. So, in forming your estimate, you did not take that into consideration at all?

A. Oh, I have lost a great deal of money by neglecting these low lands. If I had bought where the location justified it, and not taken into consideration that it was low land, I would have made a great deal of money buying it.

Q. Well, low land was worth just as much as high land in 1870?

A. I will answer it as I said before, and add not to every person; some persons insisted on going to see it.

The COURT: But he means on the market. Were they worth as much in the market as dry land?

A. Generally, they were not; no, sir; but it depends all entirely upon locality in lands.

Q. Let me ask you another question. In that locality, in 1870,

were lots just as saleable, and for just the same price, that were under water as though they were above water?

A. Well, no; they were not.

Q. If you could get people to buy lands without looking at them, you could sell them land without looking at them.

A. If the localities were all right.

Q. But if they went and saw it, and they saw they were going to buy a frog pond, then you could not get as much for a frog pond *and* dry land?

165 A. That depends upon what the people wanted to buy the land there for.

Q. Who were the people who wanted to buy land there, speculators?

A. They were men that made fortunes there.

Q. Well, some of them lost?

A. Well, some of them didn't sell at the right time, same as I did.

Q. There was a peculiar speculation in 1870?

A. Yes, sir; from 1868 to 1873.

Mr. SWETT: I object to Mr. Storrs making running notes on the case in the hearing of the jury.

Q. Now, in what part of 1868 did that speculation commence in 1868?

A. Oh, it commenced; I took notice of it specially in 1868.

Q. Well, about when did you commence to take notice of it?

A. When I made my big profits; I made over $40,000 on one piece.

Mr. GREEN: No matter about the profits.

Q. I want nothing beyond the time. What time in 1868 did you notice this remarkable speculation setting in?

A. Well, in October, 1868, I bought Pitkins' subdivision.

Q. Then you commenced to notice it then?

A. Yes, sir; low-down land.

Q. Half of it under water?

A. Half of it under water to-day.

166 Q. Now, Mr. Thomason, do I understand you to say there was no serious difference in price between January, 1869, and August, 1870, of land in the vicinity of the park?

A. January, 1869?

Q. Correct.

A. Oh, yes; I say there was; there might have been a little.

(Question read to witness.)

Q. You can answer that yes or no.

A. That is very hard to do.

(Question read to witness.)

A. Immediately after?

Q. Wait a moment. I insist upon an answer. Do you mean to say that between 1869 and August, 1870, there was no appreciable difference in the price of lands in the vicinity of the park?

A. Do you say I meant to say so?
Q. Yes, sir.
A. I say that there was, not only near the park, but about the whole county.

The COURT: He didn't ask you about the county.

Q. There was a large difference in price between January, 1869, and August, 1870?
A. I didn't say "large."
Q. How much?
A. That I cannot tell.
Q. Was there ten per cent.?
A. Oh, I suppose there was more than that.
Q. Was there 20 per cent.?
A. I cannot answer that precisely.
Q. Mr. Thomason, don't you know the land in the vicinity of South Park, between January, 1869, and May, 1869, increased
167 100 per cent. in value?

Mr. THOMPSON: That is the January prior to the park act?
The WITNESS: Yes; that is the trouble, you see.

Q. Never mind what Mr. Thompson says.

The WITNESS: Well, the point is this that I want to make——

Q. I don't want you to make a point. I will make the points. Don't you know of lands that were sold in the vicinity of the South Parks that increased in value between January, 1869, and May, 1869, 100 per cent.?
A. I don't remember that.
Q. You don't remember that?
A. No, sir; I don't remember that.
Q. You don't remember that?
A. No, sir; I don't remember that.
Q. Now, was this west 80 — that we have under consideration here available for residence purposes in August, 1870?
A. This is Robertson's right here, isn't it?
Q. That is the land there. (Indicating.)
A. I would say in answer to that question, yes, provided a part of it, you know—what part I cannot say—and also if they had a station near by, as they have now.
Q. You mean the part that was available for residence was the high part?
A. Yes, sir.
Q. Was the low part available for residence?
A. It might be done?
Q. Was it in its then condition?
168 A. Well, it might have been done if there was any low; it might have been drained very easily.
Q. How?
A. Down to about this direction.
Q. How?

A. Down in this direction.
Q. You wouldn't drain toward the lake?
A. That depends—it might be this was higher towards the lake.
Q. Do you know how much higher towards the lake the low land was in that 80?
A. No; I don't know; I could not answer that.
Q. Don't you know all drainage is towards Lake Michigan?
A. Now?
Q. Yes, sir; and wasn't it then?
A. I don't know. They taxed me like everything down here for ditches. I don't know whether they dug any at all. You will have to ask Mr. Waite about that.
Q. If you sold that in 1870, for what purpose would you sell it?
A. That is a question for the man that bought it.
Q. It wouldn't be sold for actual residence?
A. We never discussed it. We saw Chicago here grown from a little basis, and we thought—we don't know what to think.
Q. So you thought you would sell land; not knowing what to think, you sold it?
A. Well, Gen. Logan came along and bought it.
169 Q. Now, this shore piece that you have spoken of, do you know how much of that was under water in 1870?
A. I do not.
Q. Was that available for residence purposes?
A. Oh, I imagine not.
Q. The great value then that that had, gave it five thousand dollars an acre, was on account of these riparian rights?
A. Not entirely, by any manner of means.
Q. How much was riparian rights and how much was the water lot?
A. Oh, you will have to answer that yourself. I could not answer that.
Q. You could not answer that?
A. No, sir.
Q. Well, you speak of riparian rights as of great value?
A. Well, it had a great value.
Q. Give it in dollars and cents.
A. I could not do that.
Q. Well, what do you mean by "riparian rights"?
A. Well, that is a question you lawyers have not decided.
Q. Do you know?
A. Well, I tried to know.
Q. Have you found out?
A. Well, I understand that which you can use to dike.
Q. How does it become filling?
A. Yes, as you wish. You can get all the sand you like.
Q. By dredging it on the beach?
170 A. By dredging it out or on the beach, and then after awhile it would come in again and fill up the holes you dug.
Q. You mean to say that the riparian right consisted in the right

to dig holes in sand and then the waves would fly in and fill it up again?

A. That is one small feature.

Q. Well, give me now a large one. That is a small feature, you say; give me a large one.

A. Oh, you do that.

Q. I want you to. You are representing a price to a customer here, we will say. Now, what would you tell him those valuable riparian rights consisted of?

A. I would say, Go farther up——

Q. No, sir. I ask you what you would tell him these valuable riparian rights were?

A. That is what I am trying to tell you. Go up there where property is a little higher and it is worth so much, and come a little lower down, and although it is low down it is worth something.

Q. And that is the way, when a man asked you what he was paying $5,000 an acre for for riparian rights, you would answer him?

A. Well, that is the way it comes up at present moment to my mind.

Q. How would you have done it in 1870?

A. That is too far back.

Q. That is, you don't know what gave it its high basis in 1870?

171 A. Along on the lake shore there from South Chicago to Chicago everything was very high.

Mr. GREEN: I object to that. I want to know of what these riparian rights consisted in?

A. Well, they consisted in what you could use it for.

Q. Well, what was it?

A. You could use it for, as I say, for getting sand on, and you see this has half a mile boundary on the lake shore over ——

Q. All right. Tell us where the money come in. You were digging holes in the sand, what else?

A. Well, suppose you were going to have a dock from 22nd street down to South Chicago, isn't half a mile of frontage worth something on the lake?

Q. Do you ask me?

A. I am asking you.

Q. It isn't worth a cent. It will cost more to protect it than it is worth. Now, I want to know what you would say in 1870?

A. I didn't try to sell any in 1870. I will say this, that we could not buy any property on the lake shore in 1870; it was so high.

Q. You don't mean the property was so high, the prices were so high.

A. Yes, sir.

Q. What improvements were there in that neighborhood in 1870?

172 A. Oh, very little to speak of.

Q. Were there any houses on this tract of land itself that we were considering the value of?

A. There was an old house in there somewhere. I will not be positive whether it was on this tract or not.

Q. This was all on that tract?

A. Yes, sir.

Q. Whereabouts was the house, in the water or on the highland?

A. Right on the high land. It was [a] very pretty little lot, and it strikes me it was on that.

Q. How about the shore piece; were there any houses on the shore piece?

A. No; oh, no; you know that.

Q. Were there any houses on the opposite Stony Island avenue from 63rd to 59th street?

A. I don't remember. By the way, Mr. Storrs, don't you remember Fitche's house down here?

Q. That don't matter.

A. Of course it don't; it would hurt your side.

Q. How would you go to work to build a house on the shore site?

A. I would first protect it from the waves, and then I would build a house. I don't think I would select it for a homestead, but I will tell what I would select it for—for speculation.

173 WEDNESDAY, *Dec.* 4, '84—2 p. m.

W. K. NIXON was then called as a witness on behalf of the plaintiff, [and] being first duly sworn, testified as follows:

Direct examination by R. S. THOMPSON:

Q. State your name, please.

A. Wilson K. Nixon.

Q. What's your business, Mr. Nixon?

A. I am a real estate dealer and agent.

Q. How long have you been a real estate dealer in this country?

A. Ever since I came—twenty-one years ago. I bought property the year before I came, twenty-two years ago.

Q. What do you mean by the term "dealer," as distinguished from the term "agent," if you make any distinction?

A. An agent is one who acts for others—buys and sells on commission or otherwise for other parties—and a dealer is one who may do that or may buy and sell for himself.

Q. Were you a real estate dealer here in 1870?

A. I was.

174 Q. To what extent were you engaged in dealing in real estate here in 1870? How much property did you own in this country at that time?

A. I owned ——.

Q. In value, I mean; in round numbers?

A. Well, a million dollars—about a million dollars—rather more than that, I think.

Q. Did you have in 1870 a knowledge of values in Hyde Park, in the vicinity of the locations of the East Park, as now located; the East Park of the South Park?

A. I had a general knowledge of values in that neighborhood.

Q. Do you remember the occasion of the passage of what is known as the South Park act?

A. I remember its passage.

Q. Passed in February, 1869, and submitted to a vote of the people in March, 1869—March 23, 1869. Do you remember that?

A. I remember that—that is, I remember it was early in the year, but I don't remember the exact month.

Q. I will ask you what effect was produced prior to the passage of the act by the park act agitation upon real estate in Hyde Park?

A. I think it advanced values in that neighborhood—advanced them very largely.

Q. Was the advance that was caused by the park act made prior to the time of its ratification by the people and passage of act or afterwards?

175 Counsel for defendant objected to the question as being leading; which objection was overruled by the court, to which ruling of the court counsel for defendant then and there took exceptions.

A. I think that a very large portion of the improvement was previous to the location, the exact location of the park. There was, of course, when the location was made, it had an effect in addition —a great effect upon the property directly abutting.

Q. Directly in front of it?

A. Directly in front of it, but a great advance in all property in that neighborhood was prior to the location of the land.

Q. Prior to the passage of the act?

A. Yes, sir.

Q. Was there any sudden advance excepting with property adjoining and immediately fronting upon the line of the park, as described by the park act at the time of its passage?

Counsel for defendant objected to the question.

Mr. GREEN: It strikes me that the proper way or the proper form of all questions of this character is to ask the witness what was the effect upon such and such property, caused by such and such circumstances.

The COURT: Yes, that's the way.

Mr. THOMPSON: What was the effect produced by the absolute passage of the act from what had taken place just prior to its
176 passage on property that did not front upon the park itself?

A. I think there was very little; no very sudden effect produced by the passage.

Q. As to whether property stood still, receded, or advanced—what took place from the time of the passage of the act up to August, 1870?

Mr. STORRS: Q. What property?

Mr. THOMPSON: The property in that neighborhood.

The WITNESS: You mean from March, 1869, to August, 1870?

A. Yes; the advance was very large, very marked.

Q. And did that continue?

A. I think it was chiefly discounted by August after that, with the increased population and wealth of the city and business; there was a continued increase up to the time of the passage.

Q. In 1873?

A. 1873.

Q. September, 1873?

A. Yes, sir; September, 1873.

Q. I will ask you, Mr. Nixon, whether you had any matter which caused you to verify in any way your opinion of values of lands lying within this east park about that time?

Mr. FULLER: About what time?

Mr. THOMPSON: 1870.

Mr. FULLER: You mean before or after August?

Mr. THOMPSON: I mean whether there was any matter caused him to investigate, and what effect that investigation had upon
177 his general ideas of value of this particular piece of property in this particular part?

A. I had about a year later, 1871.

Q. What was the occasion?

Mr. GREEN: Q. What time in 1871?

Mr. THOMPSON: It is an investigation of the value of land in the park itself.

The COURT: Q. A year later?

Mr. THOMPSON: He made an investigation a year after August, and that investigation would certainly extend to its values in 1870. Now, what I am trying to get at is whether there was anything which caused his attention—its a long time ago; we all of us forget a great many things in fourteen years. Now, in 1871 he commenced an investigation of a particular matter for a particular purpose, right in this park, and what I want to know is whether that investigation affected, confirmed, removed, or changed his ideas of value in 1870?

Q. I will ask you, did your investigation run back from 1870?

A. It did.

The COURT: Let him answer the question.

Q. Don't name your values in 1871, but just state what you did in 1871 which caused you to make this investigation, which you say covered to his property.

Counsel for defendant objected to the question as not competent, which objection was sustained by the court.

178 Mr. THOMPSON: I will ask you whether this examination you made was in regard to land lying within the limits of the proposed park?

A. It was.

Q. And within the limits of this East Park?

A. It was.

Q. What land was it with reference to? Just show us.

A. It was with reference to land lying about immediately south of this east piece and running north, and abutting on 67th street, and running half way to there (indicating on the map).

The COURT: Now, you want to show that he did something a year later.

Mr. THOMPSON: I don't in this instance ask him to name any price, or name anything except for what purpose he made the examination.

Mr. STORRS: I object to it for two reasons. If he proves what he did do a year afterwards that don't tend to show what the land was worth a year before, and if he proves what he did a year afterwards, it don't make his judgment any more correct of the value of the land a year before.

The COURT: You may state the purpose for which you made this examination.

Mr. THOMPSON: Don't give any figures, but just state the purpose for which you made the examination.

179 A. It was for the purpose of making a loan on that property.

Q. To what extent did you make the examination?

A. I looked up all the sales that I could find for the previous year within a mile of that park.

Q. Of that particular piece of property?

A. Of that particular piece of property.

Q. Have you any idea of how many sales you investigated—about how many?

Counsel for defendant objected to the question as the sales were outside the limit.

Q. Do you remember generally about how many sales you investigated?

Counsel for defendant objected, which objection was sustained by the court; to which ruling of the court counsel for the plaintiff then and there excepted.

Q. Did your investigation include property lying within the limit of the park?

A. It did.

The COURT: Park property?

Mr. THOMPSON: Right in the park; land bought and sold after the park was made, to a very limited extent.

The COURT: Now, we ask you you if you knew of sales within the limits?

A. I did, some.

Q. At what time?

A. In 1870, by——

Mr. STORRS: Q. In what park?

180 A. In that park that I was looking at.

Q. In East Park?

A. The East Park—all in the East Park.

Q. How did you derive your knowledge of such sales—the prices for which they sold?

A. I derived my knowledge from the recorded sales and published sales.

Q. So that is all the knowledge you have on the subject?

A. On those sales it is; yes, sir.

Counsel for defendant objected to testimony.

Mr. THOMPSON: I don't ask for a single sale; I want to know whether he investigated, and he said he did; then I asked him about how many sales, and your honor said you would exclude his investigating of sales.

The COURT: No; I said as to outside sales.

Mr. THOMPSON: I want simply to know the extent of your examination. About how many sales did you examine? I want to know the reach of your examination—the extent of it.

Mr. FULLER: That is a curious way to get at supposititious sales before a jury.

Mr. SWETT: How does it affect this testimony? He says, for instance, that I went to the publication and found one hundred sales, and they were so distributed around that from those sales I made up the value of this particular piece of property. Don't that show it was careful?

181 Mr. THOMPSON: How many sales at the time of that investigation did you examine?

Counsel for defendant objected to the question; which objection was overruled by the court; to which ruling of the court counsel for defendant then and there excepted.

A. Between one hundred and forty and one hundred and fifty.

Q. Were those sales all outside of the park or a portion of them inside?

A. There was a portion of them inside.

Q. What, in your judgment, was the fair cash value of the 80 acres in question in this suit with reference to land which was outside of it, lying between 59th street and 69th street, and fronting on Stony Island avenue?

Mr. STORRS: That is a palpable violation of the rules.

The COURT: I must say you are trenching on the rule. I have distinctly held here that I don't think you are entitled to evidence on sales outside of this property. Now, you have a perfect right to bring this witness in, to let the jury understand that he had become familiar with the general situation down there, and that he was engaged in the real estate business, and all that, but you come in and ask him if he knew of particular sales outside and fronting on this particular property; then you follow it with another question, "Now, in your judgment, what is this property worth?" In fact

182 you are asking him to institute a comparison between the sales of this property and that abutting property.

Mr. THOMPSON: I will ask this further question: Did you base, and are you basing, or do you base your judgment of the value of the property in question in this suit upon the value of property having a frontage upon the park?

A. I do not.

Mr. THOMPSON: I simply wanted to show your honor that this witness made such an examination as qualified him to give an opinion not only of probable sales on property outside of the park, but he examined sales both in the park and the property lying outside of the park, but property having a frontage on it.

The COURT: Answer the question.

A. I think that was thoroughly worth five thousand dollars an acre.

Q. You mean in 1870?

A. In 1870.

Mr. THOMPSON: Now, I will ask you what, in your judgment, was the thirty-four acres having this frontage down on the lake of over half a mile, that has been described in this case, worth in cash in August, 1870?

A. From six thousand to sixty-five hundred an acre.

Q. For the purpose of saving the question I will ask this further question: "Did you make a loan there at that time?"

183 Mr. FULLER: At what time?

Mr. THOMPSON: At the time of this investigation which you made.

Counsel for defendant objected to the question, which objection was sustained by the court.

Mr. THOMPSON: I want to prove the amount which he loaned and the fact that he did absolutely pay the money on that loan on that piece of property lying south and adjoining and inside the park limits.

Counsel for defendant objected to his showing that, which objection was sustained by the court, to which ruling of the court counsel for the plaintiff then and there excepted.

Cross-examination by A. W. GREEN:

Q. When did you commence to deal in real estate in this country?

A. I made my first purchase in 1862.

Q. When did you commence to deal in real estate in the town of Hyde Park?

A. I commenced looking at property there in 1865; the summer of 1865.

Q. When did you make your first purchase of property in the town of Hyde Park?

A. I think it was in 1869.

Q. What part of 1869?

A. In, I think, the fall of 1869, as near as I can remember.

Q. Where was that property?

184 A. That was about 62nd street, and lying, I should say, a couple of blocks west of the park of Stony Island avenue.

Q. That is, it was property two blocks west of the 80 acres in question?

A. Of that; yes, sir.

Q. Do you remember what section it was in?
A. I do not, sir; it was a small purchase.
Q. How large?
A. It was, I think, about a third of an acre.
Q. From whom did you purchase it?
A. I forget.
Q. What was the next purchase that you made in Hyde Park?
A. I never purchased anything else in Hyde Park.
Q. You never were the owner of any land in the town of Hyde Park but this third of an acre west of the tract in question?
A. That is all, sir.
Q. And that one-third of an acre you don't exactly know where it was, nor from whom you purchased it?
A. I forgot; it was a small transaction and it escaped me.
Q. Is your opinion of the value of this west 80 acres based at all upon that purchase?
A. No, sir; not at all.
Q. Did you buy or sell for any other person any property in the village of Hyde Park in the year 1869?
A. I did not.
185 Q. Did you buy or sell for any other person any property in the village of Hyde Park, in 1870, prior to August 27th?
A. I did not.
Q. Did you buy or sell for any other person any property in the town of Hyde Park in 1870, subsequent to the 27th of August, 1870?
A. I did not.
Q. Then all the information upon which you base your opinion of this west 80 acres and of the shore piece is derived from information that you got subsequent to 1870, is it not?
A. No.
Q. Upon what information, what class of information, obtained by you prior to the first of January, 1871, did you base your opinion of the value of this property from the 27th of August, 1870?
A. The first information that I looked for or got was in the summer of 1865, when I went there with friends with the intention of buying a place to live.
Q. Whereabouts was that?
A. That was in the neighborhood of 62nd street, near where I afterwards got that small lot.
Q. Do you consider the information you then derived throws much light upon the value of this 80 acres of land on the 27th of August, 1871?
A. That is the first time I investigated prices.
Q. I will ask you if the information you then gained was
186 all the information you had to throw any light on the value of this west 80 acres?
A. O, no; not at all.
Q. Give us any other information.
A. I can't give you anything definitely, except that in 1870 I was frequently over the property in that town, and friends who lived

there were anxious I should buy, and I was offered property there frequently.

Q. Now, just tell us any piece of property there that was offered to you in 1870.

A. I don't know that any was.

Q. Give us any piece of property that was offered to you in 1869.

A. I don't remember.

Q. Then your opinion of the value is not based upon any recollection of any offers made to you in 1869 or 1870, is it?

A. I don't remember whether it is based, or whether these prices were offered me in 1868, 1869, or 1870.

Q. Can you give us any piece of property that was offered to you for purchase in 1868, 1869, or 1870 within half a mile of the 80 acres in question?

A. I could not describe a piece, but I was shown property within less than that.

Q. Give us one piece.

A. I could not describe it.

Q. Tell us where it was.

A. Property about the neighborhood where I was speaking of.

Q. Where was it?

187 A. Two or three blocks west of Stony Island avenue, in the neighborhood of 62nd and 63rd streets.

Q. Who offered you any for sale there?

A. A Mr. Fassett, who lived there.

Q. Where did Mr. Fassett live?

A. He lived—I could not give the number of his house; but we left the 57th-street station and went a little southwest, I should say, probably, two or three blocks; I do not know the name of the cross-streets, but I know it was about 62nd and 63rd streets.

Q. What street did he live on?

A. I could not tell you that.

Q. You don't know the name of the street he lived on?

A. No, sir.

Q. And you don't recollect of any piece of property that was offered you for sale?

A. I recollect how it looked and how near the station.

Q. That was offered you for sale?

A. Yes, sir.

Q. How large a tract was it?

A. O, two or three pieces of four or five acres.

Q. How long ago was this?

A. Along in 1870.

Q. Was this Mr. Fassett a photographer?

A. He was.

Q. You say he lived south of Fifty-seventh street?

A. No, sir; I said he took me to the house there and showed

188 me some property in the neighborhood; I think that is his own house, and he told me he lived there; just bought there.

Q. I asked where he lived then?

A. I don't know positively.

Q. Did he own this property?

A. No, sir.

Q. Then he simply took you to look at two or three pieces of property, and he told you it could be bought at such and such a price?

A. Yes, sir.

Q. And from that you made up your mind as to the value of this 80 acres in question?

A. No, sir.

Q. Then give us something else from what you made up your mind as to the value of this 80 acres?

A. I said there were several pieces of property over there I was talking about.

Q. Tell us some other time that property was offered to you, and where it was?

A. O, probably in all a half a dozen times between 1865 and 1870.

Q. You told us what Fassett offered, now give us something else?

A. I can't describe the property.

Q. Who offered it to you?

A. He offered it to me.

Q. Was it always Fassett-?

A. Yes, sir.

Q. Did he own anything else?

189 A. He owned a house and, I think, two acres there that he wished to sell me, but I did not look at it.

Q. Where was that?

A. I didn't look at it.

Q. Was there anything else; was there any other information you acquired prior to the first of January, 1871?

A. No.

Q. Then to this information that you have detailed, or to these things you have detailed, you have added the information that you derived in 1871?

A. I have.

Q. And that information, I understand you, to be information which was derived from the records and from the public reports of sales?

A. Yes, sir.

Q. Now, you can fix the time when the first offer was made to you of any Hyde Park property.

A. I said in 1865.

Q. I mean subsequent to that.

A. No; I could not.

Q. Now, do you know when the park bill was introduced in the Legislature?

A. I don't.

Q. Do you know who framed that bill?

A. I have heard, but I don't remember.

Q. You say that prior to the passage of that bill there had been a large advance in prices in that neighborhood at that time?

A. I do.

190 Q. And you say that with the knowledge that you have gained you can tell the cause of that advance?

A. Unquestionably.

Q. What piece of property did you know that had advanced?

A. I can't give you a description of them, but I know of several pieces that were sold over and over again.

Q. You can't describe any of them?

A. No, sir; I can't.

Q. You don't know any of them?

A. I should have to refer to my memorandum to find out.

Q. What memorandum?

A. O, special figures I made at the time I noted these 140 odd sales.

Q. Those were sales you saw in the newspaper?

A. Yes, sir.

Q. That is all the information you had of those sales?

A. No, sir; not in the newspapers.

Q. And in the records?

A. And in the records; yes, sir.

Q. And that was all the information you had of them?

A. Yes, sir.

Q. And from thus seeing these sales you judged there had been an agitation of the Hyde Park scheme?

A. That is all.

Q. And still you don't know the limits of the park that they fixed by the bill?

191 A. I knew from the time the subject was agitated until the park was located, for the period of two or three years.

Q. Two or three years?

A. Yes, sir; not from the first agitation, but from the time it was first definitely talked about.

Q. When was it first definitely talked about?

A. I should say in about 1868 was the first I heard it definitely talked about.

Q. That is the first you ever heard of the park scheme was in 1868, was it?

A. No, sir; not the first I heard of it, but the first I heard of its being definitely talked of in such and such a place.

Q. Then in 1868 was the first you heard what neighborhood it would be in?

A. About the place it is in now.

Q. What part of 1868 did you hear it?

A. I could not tell.

Q. Was there any increase in the value before that on account of the park scheme?

A. Not that I am aware of. I never examined back further than the beginning of 1869.

Q. You say in 1868 you learned that there was to be a park put in that neighborhood, and that there was an agitation with reference to where it was to be located?

A. I heard it talked of.

Q. And that following that agitation you say there was a large increase in the value of property in that vicinity?

192 A. Well, from the beginning of 1869 until the location in 1870, in August, 1870, to the passage of the park act?

Q. When was that?

A. That was the first I remember in August, 1870.

Q. That is your recollection that the park act was passed in 1870—think a moment?

A. No; my recollection is it was passed early in 1869.

A. What time in 1869?

A. It was stated here, I think, in March. I stated in my direct examination that I remembered it was early in 1869, but I did not remember the month.

Q. Was that in 1868 the project was to have a park put at the place that the present park is located?

A. That is my recollection.

Q. And it is your recollection that following that there was a large rise in the value of land in the vicinity of the park?

A. I never looked back specially to sales in that neighborhood, or go back further than the early part of 1869.

Q. Early part of 1869?

A. Yes, sir.

Q. Then from that time until the early part of 1870 lands increased in that neighborhood in value?

A. Until August, 1870, they increased very largely.

Q. What part of 1868 do you say you first heard of this park here?

193 A. I said I did not remember, but it strikes me it was in 1868; that is my recollection of it; it was some time before the beginning of 1869.

Q. You looked back in your estimate about how far?

A. About February and March, 1869.

Q. February and March, 1869?

A. About that time.

Q. Then you know nothing of values prior to March, 1869?

A. Only the general line of sales that were reported that year all through 65th street, and along through there.

Q. Upon what do you base your opinion that from 1868 to the first part of 1869 property there increased in value?

A. From 1865 to 1869 it increased in value.

Q. But I am talking from 1868 to 1869.

A. I don't remember that short space of time; I did not examine it very thoroughly.

Q. Then you say, Mr. Nixon, that you first learned of the proposed location of the park where it is now located some time in 1868?

A. I think it was in 1868.

Q. Can you tell us now whether there was any increase in values between that time and February, 1869, we will say?

A. I know that they greatly increased from 65th street through.

Q. Can you answer that question?

A. No, sir; because that is the time it did not do much.

194 Q. Then you can't tell now whether there was any increase in the value from 1868, when you heard the location of this park was a fact, to February, 1869?

A. I cannot in so short a time as that, sir.

Q. Mr. Nixon, have you ever been upon this west 80 acres?

A. I have, sir.

Q. When?

A. In 1871 and 1872.

Q. What is the character of that land?

A. It is rolling to a certain extent; slightly rolling and solid; there are times after heavy rains, melting of snows in winter, where there is a good deal of water on a considerable portion of it, and there are other times when it is quite dry.

Q. Does not some of it roll down pretty low?

A. Not very low; no, sir.

Q. Do you know Stony Island avenue?

A. Yes, sir.

Q. Did you know that avenue in 1870?

A. No.

Q. You had never been there in 1870?

A. I had gone down by rail, and I have been on Stony Island avenue.

Q. But you have no recollection of the appearance of Stony Island avenue in 1870?

A. No, sir; my attention was not called to it.

Q. You have no recollection of the appearance of this land in 1870?

A. I never saw it in 1870.

195 Q. Can you tell me how much of that land at the present time, of this west 80 acres, is below the level of Stony Island avenue?

A. No, sir.

Q. Is land three feet below the level of a street as valuable, and was it as valuable in 1870, as land on the level of the street?

A. That can hardly be answered in a categorical way.

Q. We will let you answer in your own way.

A. If part of a land is below a street and another portion above a street, and at a very little cost it can be brought up to the level of the street, it makes a difference, but a small one.

Q. But should it turn out that on this west 80 acres there was nothing of that kind to be done, or it would require $150,000 to fill up the level to Stony Island avenue, would that affect your opinion of the value of the land in 1870?

A. O, of course it would—that cost of it would.

Q. Would affect it considerably?

A. No, sir; not to that extent, but I don't think it necessary to be as high as Stony Island avenue to bring a full price.

Q. Why not?

A. Because it would be high enough and dry enough to keep comfortable without being quite as high as that street.

Q. How high do you think that land ought to be above the level of the lake to make it suitable residence property in that locality?

196 A. There is a great deal there in that neighborhood that is occupied as residence property and acceptable to the owners that is but a few inches, I think, above the level of the lake.

Q. Just tell us where that property is.

A. I could not tell you, sir; I have not investigated it except in passing there very often, by rail and otherwise. I have been through there a great many times. I saw a great many houses with ditches and drains on a line to the lake that were full of water, within a very few inches of the level where the houses were placed.

Q. Now, Mr. Nixon, try to confine yourself to facts. You just stated a moment ago that there was plenty of land that was within a few inches above the level of the lake that was desirable residence property. Now, I ask you, where is that?

A. It is very hard to locate a house or lot in passing by rail, although you may be perfectly satisfied of the fact.

Q. Give me within half a mile of that locality.

A. Well, I have seen it from most of these railroads.

Q. What railroads?

A. The Illinois Central.

Q. Now, Mr. Nixon, you say that there is any land adjoining the Illinois Central, between 57th street and 67th street, that is only a few inches above Lake Michigan?

A. No, sir; I did not say so.

197 Q. Where is this land which you say that you saw from the car windows?

A. I said that I passed on a number of these railroads, and on many occasions I noticed it, but I can't tell you which.

Q. Then you can't tell now any land located on the lake shore which is desirable residence property?

A. No, sir.

Q. Is there any land west of this land that we are now talking about in Hyde Park away over to State street that is only a few inches above Lake Michigan.

A. Will you tell me how far South Park extends?

Q. I am not taking right west of this park; I am taking west between 59th street and 67th street; taking that belt right straight through to State street, which is the limit of Hyde Park, and tell me any land there which is only a few inches above Lake Michigan?

A. No, sir; I don't think my answer covers land exactly there. You asked me if I knew of land occupied by houses that was only a few inches above the surface of the lake, and I answered that I had seen a great many houses within a few inches of the water.

Q. In this vicinity?

A. Well, I can't say how near to that, but in the railroads not so very far away south of that property.

198 Q. And you consider that desirable residence property?

A. So desirable that people bought and live on it.

Q. Do you consider it desirable residence property?

A. Not for myself; no, sir; but still people buy, build, and live there.

Q. You say that this west 80 acres in its then condition was suitable for subdivision among residence property?

A. It could have been made so with a very small outlay.

Q. What was necessary to be done?

A. O, scraping the higher parts into the lower ones, which is very rapidly done with a horse scraper.

Q. Then you had a paradise of it?

A. O, not quite a paradise, but salable real estate.

Q. You did not know or don't know now how much of that was low land and how much was high land, do you?

A. Well, it averaged considerably above the water of the lake.

Q. I ask you whether you know how much of it was high land and how much was low land?

A. What is the definition of what high land is and what low land is?

Q. How much of it is below the level of Stony Island avenue?

A. That I could not tell.

199 Q. How much of it is above the level of Stony Island avenue?

A. That I could not tell.

Q. Do you know in that shore case how much of that was high land and how much of it was a marsh?

A. I didn't think there was any marsh.

Q. What do you call the low land in that shore case?

A. Simply low land.

Q. How much was that above the level of the lake?

A. There may have been hollows there. I don't remember of ever seeing that, but it was dry enough. I saw enough of it for that. There may have been some of it above the level of the lake. I don't know that.

Q. How much was above the level of the lake?

A. Some of it was ten feet.

Q. How much was ten feet?

A. I could not say. There were sand dunes.

Q. But in back of the sand dunes, how much was there?

A. A number of times I saw it it was dry, and at other times it was not.

Q. What do you call marshy land?

A. Marshy land is soft, muddy land that always has water on it. You can't make it dry.

Q. But you think the land that the water stands on only half of the time, only half of the year, is not marshy land?

A. It is not a piece to sell well.

200 Q. You consider that that land was suitable for residences?

A. It could be made so by levelling it up.

Q. Then you think it would make suitable residence property?

A. By some people it can, who could not afford to pay much for property.

Q. But you think it desirable for $25 per foot?

A. I do, sir.

Q. How much of this property adjoining that on the west between that and the railroad and between 1870 and 1876?

A. I could not say.

Q. Did anybody go there?

A. I do not know.

Q. Do you consider this shore piece very desirable for residence property?

A. It will always demand a higher price.

Q. Do you consider it as desirable property as that on Stony Island?

A. There are many people that do.

Q. I believe you said that one of the causes that increased the value of the shore business was the riparian rights?

A. I did not say so, but I am ready to say that.

Q. That is the reason that you make the difference between that and the island?

A. Yes, sir.

Q. What do you understand by riparian rights?

A. The right to the shore and accretions.

Q. How do you make accretions?

201 A. I have made accretions by running out three piers 25 feet from the shore and 40 feet apart. I found that by running three piers one could carry out the line of shore almost in a straight line along piers, which are usually used to carry out a point of land.

Q. Where was it you made this experiment?

A. North of Lincoln Park.

Q. North side of the city?

A. Yes, sir.

Q. How much did these piers cost to run out?

A. On the basis of three lines, 672 feet in length, it cost me about $225 to run one row of these piers out.

Q. What was the character of these piers?

A. I used four feet oak sticks, two inches thick, and pointed. I had them driven into the sand 15 or 20 feet, and running out into the lake until the man driving would be waist deep. I then run two rows two feet apart and sticks a foot apart in each row. I then had brush laid in between the sticks and stones, loose stones laid on top of it, and one stone would fill up 25 feet.

Q. Would not the next storm take it all away?

A. No, sir.

Q. What protected your piers?

A. These piers remained there all through the summer time, and some I put in 25 years ago are good to-day.

202 Q. That is the reason you think this land more valuable?

A. One of the reasons.

Q. Is it all the reason, that you can make riparian rights?

A. That I can make accretions.

Redirect examination by Mr. THOMPSON:

Q. Have you made any of this accretion business, that you made on that land, this last year?
A. Yes, sir.
Mr. SWETT: How much?

Counsel for defendant objected to the question as not competent, which objection was overruled by the court.

Q. Now, how much land did you get?
A. From October of last year to July of this year we made nearly one hundred feet out.
Q. 100 feet out in the lake?
A. 100 feet out in the lake.
Q. How much north and south along the margin?
A. About 1,000 feet.

Recross-examination by Mr. FULLER:

Q. Whereabouts is that?
A. That is just one mile north of Lincoln Park.
Q. And this was simply accretion, you say?
A. Simply accretion.
Q. How many piers in 1,000 feet?
A. I only put piers in for about 600 feet, and I maybe
203 made 1,000 of them. They formed a point, or rather a large sand bank, out in the lake and cut through sands still further up, so that the benefit which I receive from the piers is very great.
Q. How many piers would you have in 600 feet?
A. In 600 feet I have about fifteen.
Q. What was the nature of the soil within the piers?
A. All sand.
Q. Which way did the current set?
A. The current sets from the northeast generally, but there are occasional exceptions.
Q. Substantially during the year has it set from the northeast?
A. Yes, sir; I think so.
Q. Steadily?
A. I think so.
Q. Do you know anything about the current on this side of the river?
A. I have noticed——
Q. I don't ask you what you notice; answer the question.
A. I think I know from what I notice.

204 JUDSON Q. HOYT was then called as a witness in behalf of the plaintiff, —, being first duly sworn, testified as follows:

Q. What is your name?
A. Judson Q. Hoyt.
Q. Where do you reside, Mr. Hoyt?

A. Southwestern corner of 57th street and Madison avenue, Hyde Park.

Q. How far is that from the property in question in this suit?

A. About five blocks.

Q. How long have you been living there?

A. Twenty years.

Q. What is your business?

A. Real estate.

Q. How long have you been engaged in that business?

A. Ever since August, 1867, I think, when I first went into it.

Q. Are you familiar with transactions in that location or the easternmost part of the South Park, and that general neighborhood?

A. I know of a few sales.

Q. From 1867 to the present time?

A. I know a few sales that were made in our subdivision there on the lake shore.

205 Q. Where is your subdivision—point it out on the map?

A. Between 63rd and 67th street; that is, the southeast corner of the park.

Q. Is it within the park limits?

A. Yes, sir.

Q. Of this particular part of the park, the portion of which is in question in this suit?

A. It runs up to 63rd street and lake shore.

Q. Where is it in reference to the part of the lake shore of the property in question in this suit?

A. Directly to the east of this line. (Indicating on the map.)

Q. This land in question, marked in red?

A. Well, this is directly south.

Q. On the lake shore?

A. Yes, sir.

Q. Do you know of sales, or did you know of sales, made during the years 1869 and 1870 anywhere in that locality?

A. Yes, sir; we made quite a number ourselves of this land and directly west of South Park station.

Q. Did it front upon the park?

A. No, sir; there was nothing that fronted directly upon the park.

Q. Show me on this map where that was.

A. The property located in here on Madison avenue, between 58th and 59th, and also on 57th and 58th, also on Monroe avenue, just north of this driveway and about two blocks west of the

206 South Park and lake shore.

Q. Did it front on the driveway?

A. No, sir; there was nothing sold on that part.

Mr. GREEN: You mean by the driveway Midway Pleasance?

A. Midway Pleasance.

Mr. THOMPSON: Mr. Hoyt, do you remember the occasion when this park was in contemplation?

A. Yes, sir; it was along in the spring of 1868—that is my impression; there was some agitation of a park there along in the fall of 1867, but this park that is located now was talked of in 1868.

Q. Were you or your father interested in land lying within the limits of the proposed park?

A. My father had a tract in the park lying between 63rd and 67th street, lying along the lake.

Q. That is the piece you pointed out in the subdivision?

A. Yes.

Q. When did the rise, in your judgment, occasioned by the location of the park, take place?

Mr. GREEN: Not in his judgment—in fact.

Mr. SWETT: When did it take place?

A. O, running along from the spring of 1868 to the summer of 1870, I should judge. This general advance took place that I speak of, of the park there—commenced to jump up quite a little
207 during the spring of 1869, about the time the park scheme was agitated.

Mr. THOMPSON: Was it prior to the absolute location or was it after that that this jump took took place?

A. It was during the agitation.

Q. Was it prior to the vote of the people or after the vote of the people on the park act?

A. There was quite a sharp advance before the vote; that is, before the vote in March—along during February there was quite a boom.

Q. Do you remember what day in March it was that vote was taken?

A. I think it was about——

Mr. THOMPSON: It may be put down as admitted that it was the 23rd of March that the park act was committed to the people for its adoption or rejection.

Q. Now, prior to March 23rd, the time when this park act was adopted by the vote of the people, did you know of any sales in that immediate neighborhood?

A. Yes, sir; I made sales.

Counsel for defendant objected to the question as being immaterial whether he did or did not.

The COURT: Well, I will let it go in as tending to show his familiarity of the value to a certain extent of his knowledge. I think it is perfectly competent to let the jury understand to what extent the witness was acquainted with the locality of which
208 he speaks and everything of that kind.

A. Some sales in our subdivision there, on Washington avenue there, and on Madison avenue there, in 1869 and 1870, all the way from $25——

Counsel for defendant objected to stating price.

Mr. FULLER: Where did you say that subdivision was?

A. Between 58th and 59th street-, White's subdivision; it is right east of Hopkins' division.

Mr. THOMPSON: You subdivided *then* into lots?

A. Into lots; yes, sir.

Q. I will ask you, Mr. Hoyt, to give what sales were made by you or through your office in Hoyt's subdivision of the lots that you have indicated that you say had no front there upon the park or its boulevard or driveways in the year 1869.

Counsel for defendant objected to the question, which objection was sustained by the court, to which ruling of the court counsel for the plaintiff then and there excepted.

Q. Did you sell lots 11 and 12 of block 63, Hopkins' addition to the town of Hyde Park, on the 24th day of April, 1869?

A. I did.

Q. The same being a lot two blocks north of the Midway Pleasance and three to four blocks west of the park?

A. I did.

209 Q. At what price was that sold?

Counsel for defendant objected to the question, which objection was sustained.

Mr. THOMPSON: It is argreed that the same form of the same question locating the lots may be asked.

Mr. SWETT: The question not being objected to on account of the form of it.

Mr. THOMPSON: They are dated March 3rd, March 17th, April 1st, and April 24th, 1869.

Q. Do you know of a sale made in Hoyt's subdivision which you have spoken of lying within the limits of the South Park on or near the lake shore, and substantially south of the piece of property in question in this suit?

A. Well, I know of several sales that my father made in his subdivision of the lake shore that was made in the park.

Q. When were those made?

A. Five sales made altogether.

Q. Five lots?

A. Five lots. One made to Lydia A. Hough, one to George W. Matthews, one to George Le Gare, one to William H. Burmeister, and one to Mrs. Sydney A. Myers.

Q. When did your father sell them?

A. He sold along in 1867.

Q. To the park? He sold to these parties in 1867?

A. And they sold to the park along about 1869 or 1870; I am not positive to the year.

210 Q. Do you remember the date of any one of these sales?

A No, I don't. I only know this way: After settling for these we sold the balance we had left to the park.

Q. To the park?

A. To the park.

Q. When was that sale?

A. This sale took place to the park in the spring of 1870.

Mr. THOMPSON: I will ask you to verify the time when that sale took place from your father to the park, giving all the particulars of the sale.

The COURT: This land is within the limit of the park, this piece of ground. How far from the first?

Mr. THOMPSON: The one next to it; next adjoining it.

The COURT: Further south.

Mr. THOMPSON: Right adjoining it on the south. I think your honor rules out all sales outside of the park.

Q. Mr. Hoyt, are you familiar with this location?

A. Pretty much. I have been over it a great many times; I ought to be. I know about every foot of land around there.

Q. What, in your judgment, was the 80 acres lying between 59th street and 63rd street and fronting west upon Stony Island avenue worth, its fair market value, on the 27th day of August, 1870?

211 A. 27th day of August, 1870?

Q. Yes; 1870.

A. I base my opinion on the value of the property sold outside of the park at that time.

Q. Basing your opinion upon the property in the park and whatever you think.

The COURT: What you think the property was worth at that time.

Mr. STORRS: I understand that the witness has stated already that his opinion on this question was based entirely upon the sale of outside property, which your honor has already announced is not proper. I now asked that the witness be admonished that this cannot be the case.

The COURT: You can answer as to what property outside sold at, lying upon the park front?

A. $5,500 to $6,000 an acre.

Mr. THOMPSON: You base your opinion upon your knowledge of what inside property was worth. Now, what, in your judgment, at the same time was the 34 acres on the lake shore worth?

A. Taking the location of that 34 acres, being on the lake shore there, I should value it at about the same, on account of the accretion that is liable to occur to a piece of land being on the lake front that way.

Cross-examination by Mr. STORRS:

Q. You have estimated the value of this 80-acre piece at
212 about fifty-five hundred dollars, and the time when you place that value was in August, 1870?

A. Yes, sir.

Q. For what purpose would you employ that land?

A. You are speaking of the west 80 acres?

Q. Yes; I am speaking of the 80 acres in controversy.

A. Just the same as I have all that property lying near it.

Q. Would you use it for residence purposes?

A. Residence purposes; yes, sir.

Q. The value, then, which you place upon it is for residence purposes alone?

A. Yes, sir.

Q. And that does not include any speculative purposes for which you used it?

A. No, sir; there was nothing of that kind.

Q. I want you now to tell me whether the estimate which you place upon the value of that land in August, 1870, includes the idea that the owner of it, or the supposed owner of it, was in such a situation that he could sell it for residence property?

A. I don't know anything about how he was situated.

Q. I know it, but does it include that idea?

A. I know that it is taken up by people for residence.

Q. Suppose it could not have been placed in the market at that time?

A. I go on the basis that we sell it just the same as property outside of the park.

213 A. Suppose it could not have been placed in the market at all in August, 1870?

A. I don't know as you could make any sales if you could not place it in the market.

Q. Then it would not be worth as much?

A. That would make a difference, of course.

Q. It would not be worth as much if it could not be placed upon the market?

A. If it was in litigation——

Q. Suppose it was not in litigation, and suppose the party claiming it could not have put it in the market, then the $5,500 an acre would be too high for it, would it not?

A. No; I don't think it would. I think a person could venture to pay that; it would have at that time been about the price.

Q. To any one, whether he could sell it again or not?

A. He could retail it out.

Q. My supposition is that he could not retail it or wholesale it.

A. We anticipated high prices, and, of course, everything was booming.

Q. Suppose it was in such a situation that it could not be returned for sales on the 24th of August, 1870; that you could not sell a lot to a single man for the purpose of residence, would that, in your judgment, impair its value?

A. I don't understand what you mean by that.

Q. I mean this: I mean there is an 80 acres lying there,

214 and a party who claims to be the owner of it is in such a situation that he cannot sell a foot of that land to any person for the purpose of residence. Now, then, would such an obstruction to its sale impair its value?

A. Somewhat.

Q. Would it not quite a considerable? I want to assume that he could not sell it to a single human being for the purpose of residence,

I want to know whether that would impair its value—whether it would have just as much value or whether it could sell as readily?

A. Of course it is perfectly natural that anything that could not be sold would impair the sale.

Q. It would not be worth as much, would it?

A. I don't see why the land should not be worth just as much.

Q. Now, coming around down to the land, you have already said that the value which you have placed upon that land was for residence purposes?

A. Yes, sir.

Q. Now, you want to say that if it could not be used for residence purposes at all the land is just as valuable?

A. I don't understand you.

Q. You have stated that you have placed an estimate of $5,500 an acre upon that land, and the value you have put on it is for its use for residence purposes. Now, then, I want to know whether
215 you say that if the land could not be used for residence purposes at all the land would be worth as much?

A. Of course not, if you could not use it for residence purposes.

Q. If it could not be used for residence purposes?

A. Of course not.

Q. Supposing there was one single person you could sell it to, would it have impaired its value?

A. I don't know about that.

Q. And that not for residence purposes?

A. O, no.

Q. Now come right down to what happened. Is there anything in the world that you could use that for, except for residences?

A. That is all it is fit for—residence property.

Q. It is good for nothing for agricultural purposes?

A. That is all that property all around there is — for—residence property; it is not farming property.

Mr. FULLER: Did you say that all that property around there is good for——

A. I say all that land around the park is residence property; it is no good for agricultural purposes.

Mr. STERNS: Are there any vacant lands in that neigborhood now?

A. Yes, sir.

Q. They are rather a majority, are they not?

A. Well, they are decreasing very much.

Q. But the vacant lots are largely in the majority, are they not?

216 A. Yes, sir; I guess they are.

Q. There is a great deal of property in that immediate vicinity that is in a nature of prairie wildness?

A. Very little of it. You mean to say outside of the park?

Q. Yes; outside of the park, or around it.

A. Yes; there is a portion of it.

Q. In 1870 a large portion of the property around the park was uninhabited by anything but muskrats?

A. I don't know about that; not around the South Park station.

Q. But take it around the East Park; that was wild?

A. Yes, sir; pretty wild.

Q. It was wild for a good while?

A. It was wild a good while—a considerable portion around there.

Q. You talk about facilities for selling: you are the owner of the property in the subdivision which you have mentioned; you certainly are interested in driving off the property, or solicitous to sell it?

A. Yes, sir.

Q. Can you give to me any good reason, down to within the last year, that this last tract of property has not been sold and occupied for residence other than the fact that it could not be sold for this purpose?

A. We were selling property all the time.

217 Q. We have already reached the fact in your statement that there was after 1871, and down to within a year or two, large tracts of that property in that vicinity — were entirely naked and rather wild; now, I have already stated to you that I suppose it was natural for all real estate dealers to sell their property as fast as they could; can you account for the vacant land around in that neighborhood down to within the last year or two upon any other hypothesis than that you could not sell it?

A. We were selling it all the time.

Q. You were selling it just as fast as you could?

A. To be sure.

Q. Rather pushed it?

A. Always did.

Q. In other words, you would make a large extent of sales turn upon the fact, does it not, that the property was desirable because you generally put a price upon it too high?

A. We never had any trouble about selling property there?

Q. Why have you not sold it there?

A. It has been sold and sold again, and there is a depreciation, of course.

Q. You had to take some of it back?

A. In some cases; yes, sir.

Q. Because you sold it for higher prices than a purchaser could pay?

A. I don't know about that, sir; some paid higher prices; it was just the condition of the purchasers.

218 Q. Respecting the condition of this East Park down to 1871, and the territory lying around there, you don't think all that property — occupied by people having large means?

A. No; I don't think they would.

Q. Your valuation is based upon selling this property by the lot, is it not?

A. I don't remember of any sales that were made by the acre at that time.

Q. Is it not fair to say, Mr. Hoyt, that your valuation is based upon sales made by lots?

A. Made in subdivisions that were made.
Q. But the sales were made by lots?
A. The sales were made by lots.
Q. And upon those sales you have based your estimation of this property?
A. Yes, sir.
Q. And those sales were made outside of the park?
A. They were within about three or four blocks.
Q. They were outside?
A. They were outside.
Q. Therefore the estimate that you have placed upon this property here in controversy is based upon the sales of property by the lot outside of the park?
A. That is all.

Mr. STORRS: Now, then, I move to exclude his testimony on that subject.

The COURT: I don't know that the Supreme Court has gone far enough to exclude sales of the inside property as affected by the park property sold.

Mr. STORRS: Well, leave it in for what it is worth.

Adjourned at 4.15 p. m.

219 FRIDAY, *Dec. 5th*, 1884—10 a. m.—Third day.

Court met pursuant to adjournment.
Mr. HOYT recalled.

Redirect examination by Mr. SWETT.

Mr. SWETT: Your honor, we expect to prove by this witness now that in March, 1869, after the passage of the park act by the Legislature, and before it became a law by the adoption of the people, the park act required it to be adopted by the people. Now, it was not a law until it was adopted. Now, we expect about March, 1869, we offer to prove a sale after the passage, but before it became a law by adoption by vote of the people, and before it could be affected by the passage of this law. It does not front on the park, but it is in the immediate vicinity, as illustrative of the values there in that vicinity. No assessment had been made on it; nothing had been done. It was simply a sale to a purchaser who chose to purchase it—the land adjacent to the park.

Overruled and exception.

The COURT: I do not think the Supreme Court went upon the theory that the property was necessarily affected after the passage of the act. What was evidently in their minds was the *affect* of the project and the passage of the act upon the adjacent property.
220 That is the substance of the opinion and the reason of it. Therefore, I will give you the benefit of your exception, and you may save your objection.

Mr. SWETT: We will reserve also the question. We want to re-

argue this when we get to the jury. Now, we have sent to the Supreme Court for a certified copy of the instructions which the Supreme Court passed on, and we have also sent for the whole abstract, so that we may have the case. We preserve an exception to the ruling of the court.

Mr. THOMPSON:

Q. Mr. Hoyt, can you state now the date when the price was fixed at which your father sold the lands to the South Park Commissioners?

Objected to. Overruled and exception.

Q. The question is whether you now know about the time that the price which your father received for the land which he sold in the subdivision on the lake shore was agreed upon.

The COURT (to the witness): Do you know the time?

A. I will say the price agreed upon was along in the summer.

Mr. GREEN: Does he know of his own knowledge?

A. It was along in the summer of 1870.

Mr. THOMPSON: What was there in the way of an immediate consummation of the sale?

A. There was a mortgage given by Mr. Hoyt that had to be foreclosed, and I think there was a vacation of the whole subdivision, and it took a long while to have the abstract brought down.

221 Q. When was the transaction finally disclosed and the deeds passed?

A. Along in March—about March, 1871.

Q. Have you got the exact date?

A. Yes, sir; the sale to George M. Mathews.

Q. I mean to your father?

A. March 4th, 1871.

The COURT: Did he convey the lands?

A. Yes, sir.

Mr. SWETT: Now, the price was fixed in the summer of 1870, and then the abstract had to be perfected, and then it was closed in 1871.

The COURT: Where is this land?

The WITNESS: It lies west of this tract, on the lake shore.

The COURT: In the neighborhood of the lands in controversy?

A. Yes, sir.

Mr. SWETT: Now, point out where is the land you speak of was situated?

(Map handed to witness.)

A. Between 63rd and 65th streets, fronting on the lake.

The COURT: He pointed that out yesterday.

Mr. THOMPSON: It is immediately south of the piece on the lake shore that is in question in this suit, isn't it?

A. Yes, sir.

Q. Now, what was the price per acre?

Objected to. Objection overruled. Exception.

The COURT: Do you know of negotiations between your father and the park commission-rs?

A. Mr. Gage and Mr. Cornell was in our office a great
222 many times during 1870, and along in there on different pieces of ground, getting valuations, etc., and negotiating about this time with my father for this sale of this land.

The COURT: Do you know that they agreed upon the price in 1870?

A. I am not positive as to that. I knew the price was agreed upon along in 1870—along in the summer of 1870.

Mr. FULLER: How do you know it, is the question?

A. I know from the fact that my father said to me ——.

Q. You know it is a fact that he said it to you?

A. Yes, sir.

The COURT: At the time?

A. At the time.

Mr. FULLER: Your father is living, isn't he?

A. Yes, sir.

Mr. SWETT: Do you remember the conversation between Cornell and Gage and your father?

A. No; I do not. I know of the circumstances though, for I heard them talking a good deal.

Mr. THOMPSON: Where is your father?

A. At the office, I suppose; 125 Dearborn street.

The COURT: He is at the office?

A. I do not think he is down there now.

Mr. FULLER: But he does go up and down town, don't he?

A. Yes, sir.

Q. How old is he?

A. 71 years old.

223 The COURT: Well, he is not so old that he cannot come here; in this real estate deal a great many things are said regarding prices, and sometimes the purchase-money is expressed in the deed, and sometimes it is not, for various reasons. I will not say now that you shall not answer the question, but I think, under the circumstances, you ought to bring the party himself. He says his father told him that was what he got for it. Now, it is not necessary to resort to that.

Mr. DUNLEVY: Allow me to ask another question. I think I can tell just as well as his father. Did the plat have to be perfected there after the deed was executed?

A. That is my impression; I know there was a good deal of trouble.

The COURT: This witness does not say he was present and heard the parties agree.

A. I do not remember distinctly any conversation that occurred, although I know the facts that occurred.

Mr. FULLER: How old are you?

A. I am 38.

Mr. THOMPSON: Did you draw the papers up, Mr. Hoyt?

A. For the South Park?

Q. As between your father and the South Park?

A. I did draw up a great many papers, but I am not certain whether I drew the papers or not.

Q. You were in the office all the time?

A. I was in the office and drew most of the papers; in fact, all of them, you might say.

224 Q. Did you have any interest in the land personally?

A. Nothing; no.

Q. Well, do you know whether they did pay him?

A. Yes; I know they paid him.

Q. How do you know that?

A. I know he got a check——

The COURT: Do you know the amount they paid him?

A. They gave him a check for $5,950.

Mr. FULLER: How much was the land?

A. There was about two acres, I guess.

Mr. THOMPSON: Describe what the land was.

A. I think there were three triangular pieces; that is, a triangular piece on the southeast corner, a triangular piece on the northeast corner, and a triangular piece on the southwest corner—about two acres that I judge he had left there that he sold to the park.

Mr. GREEN: Do you know the exact dimensions of it?

A. Pretty near, because I went down with George W. Waite and surveyed it off in the spring of 1879, and we found the old road of Lake avenue had been washed away; that was 64 feet wide and 263 feet long.

Q. In 1869?

A. About 1869, I think.

Q. Do you mean the street on the lake shore?

A. The street on the lake shore. I remember it had washed off into the bank there, and some trees that was on the edge of the bank had fallen over into the lake; I remember that distinctly.

Mr. THOMPSON: We will prove the sale by the com-
225 missioners themselves, your honor, as to what is the exact conveyance covered. They will bring their books in here.

The COURT: I suppose there is no doubt of the fact that there was a conveyance at the time he testifies.

Mr. SWETT: We want the compensation.

The COURT: He has said it.

Mr. GREEN: But the point of the inquiry is not the amount that was paid, but how much land; he is entirely mistaken about the amount of the land.

Mr. THOMPSON: Well, that we can ascertain from the books.

Recross-examination by Mr. FULLER:

Q. Have you a definite recollection about what the conversation was?

A. I have not any definite recollection of it.

226 THOMAS B. SNYDER was then called as a witness in behalf of the plaintiff-, &, being first duly sworn, testified as follows:

Direct examination by Mr. THOMPSON:

Q. What is your business, Mr. Snyder?
A. I am engaged in the real estate business.
Q. How long have you been engaged in that business in this city?
A. Nearly 22 years.
Q. Is that exclusively your business?
A. It is.
Q. Was it so in 1869 and 1870?
A. It was.
Q. Mr. Snyder, were you alone in the business or were you connected with a firm in 1869 or 1870?
A. With a firm.
Q. What was its name?
A. Snyder & Lee.
Q. To what extent did your firm in 1869 and 1870 deal in Hyde Park property?
A. We did a very large trade down there.
Q. Can you give us any idea of it?

227 A. Not to a definite amount, but we bought and sold a great deal of ground in the whole township of Hyde Park.
Q. Were you in the same business in 1867?
A. Yes, sir.
Q. Here in this city?
A. Yes, sir.
Q. When was the first park agitation in reference to Hyde Park?
A. To my recollection, in the winter of 1867 and the spring of 1868.
Q. Do you remember what was done?
A. A bill was introduced into the Legislature, submitted to the vote of the people, and defeated. The bill was passed in the Legislature, submitted to the people, and defeated.
Q. It was defeated?
A. Yes, sir.
Q. What took place after that?
A. Then there is what is called the second bill. It was passed by the Legislature, and submitted to the vote of the people. That, of course, was carried.
Q. Do you remember about the time of the last bill, when it was passed, and when it was submitted to the vote of the people?
A. Yes; some time in the winter it was passed, and submitted to the people in the winter, or March, 1869.
Q. Passed in February, wasn't it?
A. I believe so.
Q. Now, do you remember distinctly when the rise in property in reference to the benefits supposed to be derived from this park took place?

228 A. Yes, sir; I do.

Q. When?

A. I think the great increase was between the passage of the first bill and — defeat, and the passage and success of the second bill.

Q. What was the condition of the real estate market in Hyde Park immediately after the ratification of the second bill—say, from March into the middle of the summer of 1869?

A. It quieted down, and was not nearly as active as it had been before the passage of the act.

Q. When did it resume activity again?

A. In the summer or fall of 1869.

Q. What was the result of that?

A. It was very active after the time of the panic.

Q. In what year?

A. 1873.

Q. What was its condition in the summer of 1873?

A. Very active.

Q. Can you give a better idea than simply active?

A. I think it was the best year I had in the city of Chicago, from 1863 up to the present year.

Q. What caused that activity of which you speak in 1870?

Objected to.

Q. What was the cause of the activity in 1870 that you speak of?

A. Well, I think there was general causes; I think speculation was very ripe; the city of Chicago was growing very rapidly at that time; there was a great deal of excitement in real estate that year.

229 Q. Was that limited to Hyde Park?

A. No, sir.

Q. Where was its limits?

A. All over the city of Chicago, and all over the county of Cook.

Q. Was it so upon the north side?

A. Yes, sir.

Q. And the west side?

A. And the west side, and the northwest, and the southwest.

Q. What did the location of the park have to do with that rise that took place from the early fall of 1869 to the middle of August, 1870?

A. I think that would have all been discounted before, and I think it was general booms that made an active market in 1870 after that?

The COURT: From the early fall of 1869 to what time did you say?

A. To 1870.

Mr. THOMPSON: I will ask you, was there any particular localities that sales were devoted to, or was it spread all over the entire city at that time?

A. It was spread over the entire city and town, the county rather.

The COURT: Q. As you propose to prove these outside sales by all of the witnesses, it would be well to do it and save your exception.

Mr. THOMPSON: Well, I do not suppose it will do for us to make that proposition after the witnesses have left the stand.

The COURT: You can agree on it and save your exceptions.

230 Mr. THOMPSON: Mr. Snyder, I will ask you if you know the value of the property in question in this suit in 1870? What was its fair cash value—the property being the 80 acres lying between 59th and 63rd streets and fronting west upon Cottage Grove—I mean Stony Island avenue—and the 34 acres lying upon the shore immediately east of that tract?

A. I do, sir.

Q. What, in your judgment, was the fair cash value of that property without regard to its benefits derived by reason of the park at that time?

A. In my opinion it was well worth from $5,000 to $6,000 per acre.

Q. How about the price on the east shore?

A. I averaged them both about the same.

Cross-examination by Mr. GREEN:

Q. You say the name of your firm was Snyder & Lee?

A. Yes, sir.

Q. What was the name of your partner?

A. J. Lewis Lee.

Q. When did you commence to deal in Hyde Park property?

A. Well, in about in 1865.

Q. About 1865?

A. About 1865; still from 1863 I was familiar and done all I could to post myself in regard to Hyde Park property.

Q. Well, from that time on up to and after 1870 you say you dealt in Hyde Park property?

A. Yes, sir.

Q. Have you ever been on this west 80 acres?

231 A. Yes, sir.

Q. When?

A. Oh, quite a number of times; every year from 1856 up to the present time.

Q. Were you on there, then, in 1870?

A. More than likely; yes, sir.

Q. Well, were you?

A. I cannot go back—well, I am certain I drove along there in 1870 and through there in 1870; yes, sir.

Q. Was that west 80, as far as the conformation of the ground, about the same now as it was then?

A. Yes, sir.

Q. Is there any low land in that west 80?

A. Yes, sir.

Q. How much?

A. I am not prepared to say, except as to the general lay of the land in this tract.

Q. You do not know how much was low and how much was high land?

A. Not exactly.
Q. Can you give your estimate?
A. I would judge about one-half.
Q. You would judge one-half was low and one half was high?
A. Yes, sir.
Q. The low land—how much was it below the surface of Stony Island avenue?
A. I am not prepared to answer that question, but not much lower.
Q. Was it a foot lower?
A. I am not prepared to say exactly.
232 Q. What is your estimate?
A. Well, I say it wasn't more than——
Q. It wasn't a foot lower than Stony Island avenue?
A. I don't believe it is.
Q. Is your recollection that about half of it was low land, and that low land was not a foot below the level of Stony Island avenue?
A. Yes, sir; that is my recollection of that land.
Q. In 1870 was Stony Island avenue opened?
A. Merely as a road.
Q. It was not macadamized, was it?
A. I think not.
Q. Was there any water pipes laid in that neighborhood?
A. No, sir.
Q. Any sewerage?
A. No, sir.
Q. Any gas lamps—lamps of any kind?
A. No, sir.
Q. Was there any residence on this west 80?
A. No, sir.
Q. Was there any residence on the tract of land immediately west of it?
A. Yes, sir; in the neighborhood of Wood Lawn there was.
Q. On the tract west of it?
A. Oh, immediately west?
Q. Yes.
A. No, sir.
Q. You say in the neighborhood of Wood Lawn station there was some residences?
A. Yes, sir.
Q. About how many?
233 A. Well, my recollection is there was fifteen houses. I want to correct myself. I think the Fitch House stood on the southwest corner of 63rd street and Stony Island avenue.
Q. I guess not.
A. On the southwest corner of Stony Island avenue and 63rd street.
Q. If it was, that is the only one that is there, isn't it?
A. Immediately west of it; yes, sir.
Q. Well, if it was on the southwest corner of Stony Island avenue and 63rd street it would not be just west of this tract?

A. No, sir; not immediately west.

Q. How was that neighborhood in 1865; what changes had taken place?

A. There had been very little improvement.

Q. What?

A. To my recollection there had been a few houses built then.

Q. How many?

A. I could not pretend to give you the exact number.

Q. How was it in 1880?

A. No great change about 1880.

Q. That neighborhood remained substantially a wilderness up to 1880, didn't it?

A. No, sir; I never called it a wilderness and cannot to-day.

Q. Did not it remain substantially uninhabited up to 1880 with the exception of the improvements in the neighborhood of Wood Lawn?

A. Yes, sir.

234 Q. There was no great change in those from 1870 to 1880?

A. No great change.

Q. So that neighborhood remained in substantially the same condition, vacant and unoccupied for the most part, from 1870 to 1880, didn't it?

A. Practically, yes, sir; with the exception of water pipes along through it.

Q. But nobody to take the water.

A. No, sir.

Q. Now, in passing your estimate of the value of this ground, do you base it on subdividing that land and selling it in lots?

A. No, sir; I do not.

Q. What could that west 80 be used for?

A. It could be used for residence property.

Q. It could be used for residence property?

A. Yes, sir.

Q. Just in its then condition?

A. No, sir; to make it available a person would make a subdivision and probably drain a portion of the premises.

Q. How would he drain it?

A. They would grade the streets, fill up the low places, and level down the ridges.

Q. Do you know how much that would cost?

A. No, sir; I don't think it would be a very expensive job.

Q. You don't think it would be a very expensive job?

A. I don't think it would be.

Q. You say fill it? You would want to fill it at least to the grade of Stony Island avenue, wouldn't you?

A. Not all of it; not necessarily.

235 Q. You think it would be desirable residence property even if it was below the grade of the street?

A. In a great many places they have a low place for the house and a high place for the garden.

Q. Do you know how high Stony Island avenue is above Lake Michigan?

A. Not to my own certain knowledge; I have been told, though.

Q. If the land had been subdivided in 1870, do you think there would have been a ready sale of it in lots for residence purposes?

A. It would have sold better in blocks of acres.

Q. Not for residence purposes, then, but for speculative purposes, then, wasn't it?

A. Well, we would have called it residence property.

Q. You didn't have people go there and reside at that time?

A. I might have been able to sell it to parties for improvement in 1870.

Q. Was there any of the surrounding land improved in 1870—was it for ten years afterwards?

A. No; it was not, then.

Q. So you don't think that could have been sold for actual residence in 1870, do you?

A. If the proper effort had been made it might have been sold; the chances are it could have been sold.

Q. Was any of the surrounding land sold for that purpose?

A. I think there was very little cut up and offered for sale in small parcels.

Q. Was not these subdivisions made in that neighborhood?

236 A. Yes, sir; but not great many.

Q. Were those subdivisions sold and occupied in 1870?

A. A great deal was sold.

Q. Was it occupied?

A. No, sir; only to a limited extent.

Q. It was sold to people to sell again, wasn't it?

A. With a view some day that it would be occupied.

Q. But the people that bought it bought it to sell again, didn't they?

A. I don't know what they intended to do.

Q. The people that bought it didn't actually occupy it, did they; they didn't occupy it as a residence, did they?

A. No, sir.

The COURT: Those who were dealing were generally speculators, weren't they?

A. As a general thing in that location; yes, sir.

Mr. GREEN: Speculators were buying and selling for each other; isn't that about it?

A. Yes, sir.

Q. The ultimate actual value of land must be based upon what that land can be used for, is it not, outside of speculators selling to each other?

A. Oh, I suppose so, to a limited extent; yes, sir.

Q. Isn't it so to an actual extent? I am speaking of about the actual value of land.

A. No, sir.

Q. Well, what other value was there?

A. A man might buy a hundred feet of ground and hold it for a garden.

Q. Isn't that part of his residence?

237 A. Yes, sir.

Q. That is what I am saying. Outside of the actual use there is no other value to the land, except for speculation?

A. No, sir.

Q. So, at the price which you have given for this west 80 is a speculative price in 1880 according to your idea, isn't it?

A. No; I gave what I considered a fair actual cash value at that time.

Q. Do you believe that a person could have been found in 1870 to give $5,000 an acre for that land to go down there and live?

A. Well, with a view of making it residence property, I do.

Q. Do you think he would have gone out there and lived himself in that neighborhood in 1870?

A. Well, yes, sir.

Q. You did not find anybody that did buy the land and did go there and live in 1870?

A. Not at that particular point, but the Fitch's went down and lived near there.

Q. They were speculators too, were they not?

A. Yes, sir.

Q. Now, the shore piece, was that available for residence property in 1870?

A. If properly handled.

Q. For residence property?

A. Yes, sir.

Q. In its then condition?

A. No.

Q. What would be required to make that residence property?

238 A. It would have to be made a subdivision.

Q. On paper?

A. No; on the ground.

Q. What would you have to do to make a subdivision on the ground?

A. Survey it; plat it; make it into streets, etc.

Q. Would you not have to fill it in?

A. Probably level it, and perhaps some filling.

Q. About how much do you think?

A. That would depend upon the use you wanted to make of it.

Q. I am talking about residence property—not for a skating rink—for residence property?

A. I am referring to a large portion; people would have bought a portion of the low ground for residence purposes.

Q. Would they be required to fill it?

A. Some.

Q. In its then condition it would have made an excellent skating rink, wouldn't it?

A. I do not believe it would.

Q. Why; wasn't there enough water?

A. I don't believe it would; the location was not good.

Q. It would have been a good location for residence property, but not a good location for a rink?

A. Yes, sir.

Q. Why would it be better for residence property than for a skating rink; because there wasn't enough people to go to it?

A. Yes, sir.

239 Q. But still you think that on that property in 1870 people could have been found to go down there and live?

A. Not at all unlikely.

Q. But where—live in an insane asylum?

A. No; live in a house and live on that 34 acres.

Q. Do you think so?

A. Yes, sir.

Q. Do you know any place in that neighborhood, in the lake shore, where people did in fact come to live in 1870?

A. Not in that immediate vicinity, but they did south of it.

Q. How far south?

A. 67th street, four blocks south.

Q. Who?

A. The Fitch's.

Q. The same old crowd of speculators?

A. Yes, sir.

Q. How many more besides Fitch?

A. There were four or five went down to Clark's Point—75th street.

Q. That is five; how many more?

A. That is about all.

Q. So that all the people that lived there was about five? Don't you think if you subdivided that property for actual residence the sale of lots would have been very slow?

A. Not with a view of making residence property. It would have sold very readily.

Q. I mean for people to go there and reside.

A. In selling land a man never asks what they want it for, so that he gets his price.

Q. Is that it?

240 A. Yes, sir.

Q. Do you think it could have been sold to anybody but to a man who was going to buy it to sell again, in 1870?

A. Oh, if properly worked up and improved it could have been sold for strikingly residence property.

Q. And you think people could have been found to go down there and live?

The COURT: If it had been divided into lots would people have bought it for residence property? You say if it was improved.

A. Then I will change my answer. If it had been properly developed and improved.

Mr. GREEN: Supposing that you had filled that up and laid out streets and divided it into lots and recorded your plat, do you think

that in 1870 it could have been sold to actual settlers to go there and live?

A. If a person had taken the ground——

Q. Answer my question—do you think it could have been sold to actual settlers?

A. Not unless you made them an inducement to get them there.

Q. Did not the real estate agents all do that?

A. No, sir; we did not make a business of building houses and grading streets and platting streets.

The COURT: I think he has fairly answered it. He says there was not an active demand that would have brought them there.

Mr. GREEN: Do you know when the second park act was passed?

241 A. I know it was passed some time in the winter—some time between the meeting of the *meeting of the* Legislature and the election, which was the 23rd day of March.

Q. What year?

A. 1869.

Q. Was there any increase in value of property in the neighborhood of the park between December, 1868, and 1869?

A. Yes, sir.

Q. How sharp an increase in value was there?

A. Considerable of an increase; quite sharp.

Q. Now, take land that was to front upon the proposed park—was there any increase of value of park fronts, as they were then called?

A. Yes, sir.

Q. Between December, 1868, and May, 1869?

A. Yes, sir.

Q. How sharp an increase was there?

A. Pretty sharp; it is pretty hard to answer the question, because the park land from 61st street to 63rd street and from 66th street to 67th street——

Q. Do you know Drexel's and Smith's subdivions?

A. Yes, sir.

Q. Fronting upon the West Park?

A. Yes, sir.

Q. Can you tell us about — the change of values in that subdivision was between 1868 and 1869?

A. I cannot give the exact month, but I know in that winter

242 and spring, up to the election, the trade was very active, and real estate advanced in that particular location.

Q. Do you pretend to say that that advance was not caused by the fact that that property was to be adjacent to the park?

A. No, sir; I do not.

Q. Well, you say it was, don't you?

A. Yes, sir.

Q. Mr. Snyder, do you know when it was known what was to be the proposed limits of the park under the new act?

A. When the bill was before the Legislature we would have a

rumor nearly every day that it was to be here, and then that it was to be here.

Q. Are you sure about that?

A. Up to the passage of the bill, yes, sir.

Q. Do you know that when that bill was introduced into the Legislature that the limits of the park were not fixed?

A. I do not know about that.

Q. You don't know about that?

A. No, sir.

Q. But you say that there were rumors that it was going to be changed?

A. Yes, sir.

Q. And the values fluctuated as these rumors came?

A. It was always an upward movement.

Q. But they fluctuated some, didn't they?

A. Well, with the exception of an old decline, there was no decline in prices that year.

Q. But, as they thought the park would go to one place, prices were higher there?

243 A. Yes, sir.

Q. And if they thought it would go to another place, the prices would be higher there?

A. Yes, sir.

Q. And when the rumor came that it was not going to a place the price fell off there, or the activity decreased in that neighborhood, didn't it?

A. Yes, sir.

Q. Now, let me illustrate this to you. Supposing that the Midway Pleasance—you know what that is—had been wiped out of this scheme entirely, do you think that would have had any effect upon the lands just adjacent to the Midway Pleasance?

A. Yes, sir: I do.

Q. Would it have affected to increase or decrease the prices of that adjacent land?

A. It would not have increased it.

Q. Don't you think it would have the effect to decrease it?

A. Immediately fronting it, yes, sir.

Redirect examination waived.

244 MARTIN VAN ALLEN was then called as a witness on behalf of the plaintiff-, and, being first duly sworn, testified as follows:

Direct examination by Mr. THOMPSON:

Q. Mr. Van Allen, what is your business?

A. Real estate and civil engineer.

Q. How long have you been engaged in the real estate business in this county?

A. Since 1854.

Q. During that time have you had occasion to live in Hyde Park?

A. Yes, sir.
Q. Are you acquainted with the land in controversy in this suit?
A. In the Jackson Park—the South Park?
Q. Yes, sir.
A. Yes, sir.
Q. You know where it is?
A. Yes, sir.
Q. Are you acquainted with the land itself?
A. Yes, sir.
Q. Have you seen it?
A. Yes, sir.
Q. Were you acquainted with that land in 1870?
A. Yes, sir.

245 Q. Were you in the real estate business during the years 1867, 1868, 1869, and 1870?
A. Yes, sir.
Q. Do you remember the park agitation?
A. I do.
Q. As to both bills?
A. As to both bills.
Q. When did the appreciation of property caused by the park agitation and by its location, take place?
A. Well, that is a pretty hard question to answer, because there was a general appreciation of all matters in the county after the panic of 1867; there was a general appreciation of property all over the country.
Q. I mean *when* was the effect of this particular park, so far as it affected land in Hyde Park?
A. That began about the time of the agitation of the bills passed in 1867.
Q. And continued until what time?
A. On up to about 1870. During those periods there was seasons of intense activity; indeed the season was almost continuous.
Q. Do you remember when the present park act was passed?
A. I think it was in 1869—the session of the Legislature of 1869.
Q. February, 1869?
A. I think February, 1869.
Q. And it was voted upon in March 3rd, 1869?
A. Yes, sir.
Q. When did the appreciation of property by reason of the South Park cease?

246 A. Well, it ceased very soon after the Supreme Court or about the time Supreme Court passed upon the legality of the thing, and people began to realize that they had a mortgage upon all they bought outside the park. Then the activity ceased, and there was not the same life and activity ever from that time forward that there was previously.
Q. Do you remember the condition of the real estate market in 1870?
A. In 1870 it was a very good year for real estate—a very good year indeed.

Q. Was that confined to Hyde Park or was it general?

A. It was general throughout the country.

Q. Mr. Van Allen, what in your judgment was the fair cash value of the 80 acres lying between 59th street and 63rd street, fronting west on Stony Island avenue—the piece of property in question—in the middle of August, the 27th of August, 1870?

A. $5,000 an acre.

Q. And what at the same time was the value of the piece lying upon the lake shore—the 34 acres there in question in this suit, as has been described, lying east of the 80—the 34-acre piece on the lake shore?

A. It was worth, probably, in the neighborhood of $35 an acre more.

Mr. FULLER: We might as well have the agreement entered that the lake shore piece contained on the 27th of August, 1870, 34 acres.

247 Mr. THOMPSON: That is all right, and the other piece contained 80 acres, less the three acres that we are not entitled to.

The COURT: Less three acres previously sold.

Mr. FULLER: It is an admission, of course, only for this case; there is some dispute over the other acres.

The COURT: Certainly.

Cross-examination by Mr. STORRS:

Mr. STORRS: Have you ever before been a witness in this condemnation suit?

A. Yes, sir; once or twice.

Q. Is that all?

A. Yes, sir.

Q. How long do you say you have been engaged in the real estate business in this city?

A. Since 1854.

Q. I understand you to say there was a sharp advance in the value of property in that region immediately after the agitation of the park?

A. No; that is not what I said.

Q. What did you say?

A. I said the advance commenced at the time of the agitation; I did not say a sharp advance.

Q. A good deal of that advance was attributable to the fact that a park was to be created there, wasn't it?

A. The advance was attributable to the fact that a large amount of property would be taken for a park, and not be available in the future for residence property.

248 Q. That is my question which you have answered in the affirmative; that it was to be used in the creation of a park.

A. Yes, sir.

Q. I understand you to say that there was an advance up to the time of the passage of the park act?

A. Continuously up to about the time of the decision of the master; probably along in the summer of 1870, when they began to realize the fact that the property was mortgaged to pay for this.

Q. Did the property decline after the vote had been cast and after the fact had become known there that the park was to be located there?

A. Not immediately afterwards, because the people who had got it were generally stiff holders; men who had made money and who could hold off and see their way out of it.

Q. Did it begin to decline afterwards?

A. It declined afterwards.

Q. The mortgages were to mature in 1873, I think?

A. I don't remember really at what time the first assessment, that — the South Park Commissioners, began.

Q. Times kept pretty good, didn't they, up to 1873?

A. Exactly, but——

Q. Answer the question.

A. I prefer to make an explanation.

Q. Answer the question and never mind your explanation. That park there did not share in the general prosperity of the
249 country, as I understand you, then, from 1870 to 1873?

A. Your misunderstanding is very grossly erroneous.

Q. Did it advance or did it not after 1870?

A. After the thing was determined.

Q. It was determined in 1870, wasn't it?

A. It was determined in 1870.

Q. Did that property fail to share in the general prosperity of the country from 1870 to 1873?

A. Oh, no; no sir.

Q. There was a general increase in value from 1870 to 1873, was'nt there?

A. Well, hardly; not the property that was covered down there.

Q. Now, I am not speaking about that.

A. What are you speaking of—the general prosperity of the whole country?

Q. There was a general increase in value of property throughout the whole country?

A. Yes, sir.

Q. But the property near South Park didn't share in that prosperity, did it?

A. Because of the mortgages.

Q. And the mortgage was a tax imposed upon it; that is the reason why sales were so slow after 1870, is it?

A. That is the reason why, and I know the number of my clients who drew their money as rapidly as they could do it.

Q. Now, the burdens upon these adjacent property holders were so great in paying for the purchase of this land for the park
250 that it really impaired the facility for sales, didn't it, down there?

A. That was one of the improvements.

Q. And the higher you got the lands in the parks the greater the burdens?

A. Yes, as a general principal; but the assessment was fixed on the estimate of the commissioners at a given sum, and that sum, as I understand it, was not to be increased or diminished by purchasing dearer or cheaper.

Q. When was that sum fixed?

A. I think it was fixed and determined—I am not really certain; it was one of the elements that entered into the Supreme Court decision.

Q. Never mind the Supreme Court decision; I argued that case myself.

A. You asked me, and I say I do not know; I say it was fixed in that litigation, but I am not certain; some time in there, but I am not familiar with that enough to know.

Q. Now, all I am after from you is to specify the times and burdens established, and that as soon as that was specified the sum became fixed, and that then a drop off took place in the value of that property again.

A. No; I would not like to say that; that would not be an exact statement of what I would like to say. You are putting words in my mouth that I do not intend to say; but I do say when people began to realize the facts they were anxious to unload, and others did not want to purchase.

251 Q. Did not the burdens begin about the time the knowledge was communicated?

A. About that time.

Q. Now, the first assessment was to be paid pretty quick, wasn't it?

A. I don't know; I don't remember.

Q. Were you not sufficiently familiar with the course of business to know about that?

A. I do not remember it; but I was familiar with the course of business.

Q. Was it a fact that so soon as the people owning this adjacent property came to realize what sums of money they were obliged to pay for this park that then activities in the purchase of that property ceased?

A. Activities were very materially reduced.

Q. Now, when was that?

A. I give it up.

Q. Now, then, the higher the prices, therefore, that the park commissioners were compelled to pay for this land the lesser the activity in the sale of adjacent property; is that so?

A. Wait until I tell you. Don't keep interrupting me all the time.

Q. Will you answer my question?

A. I will if the reporter will read the question.

Mr. STORRS: Read the question.

(Question read.)

A. That is true to that extent.

Q. That will do.
A. It will not do.

The COURT: Explain, then, if you want to.

252 The WITNESS: The commissioners went on and made estimates as to the values of all the lands, and those estimates were fixed as a basis upon the certain properties per acre. What those properties per acre is I cannot tell you now. I had it in my head before. They were fixed upon a certain valuation of that property, but the valuation was spread out upon the adjacent property, and when the people began to realize the amount of the debt, the size of all there was to pay——

Mr. STORRS: When did the activities begin to decline?
A. Along in the latter part of 1872 and 1873.
Mr. STORRS: That will do.
A. I mean 1870 and 1871.
Q. How many times in the last three years have you been a witness in condemnation cases?
A. Condemnation cases of all kinds?
Q. Yes; condemnation of all kinds; we will say all kinds?
A. Well, the State street, I guess——
Q. Just give the number of times.
A. I am telling you where they were.
Q. Never mind telling me where they were.
A. But I will. There is an item here—the State-street condemnation case; that was one case, and there was 250 or 300 times that I was called as a witness.

Q. All in one suit?

253 A. It may amount to 75 or 80 times within the last three years, in different suits.

Redirect examination by Mr. THOMPSON:

Q. You spoke about property in this cross-examination that was affected disadvantageously by reason of a mortgage. Did you refer to the property lying within the park or did you refer to the property lying outside the park?
A. That was outside.
Q. Now this mortgage; by the word "mortgage" you mean the special assessment levied upon the outside property for the purpose of this park?
A. Yes, sir; that is the exact thing I mean; the property lying outside had a special assessment, which I termed a mortgage; the property inside the park did not have to contribute towards the payment of that assessment.
Q. Do you know whether the amount of the special assessments, which is to be specially assessed on this property by reason of this park, was determined?
A. My recollection is that it was determined at the time of the location of the limits.
Q. Has not that amount, years ago, been determined?

Objected to.

Q. Do you know about when it was determined?

A. I do not know exactly.

254 Q. Well, do you know whether it was necessary to determine an amount before you can assess it upon property?

A. Presumably it is; you cannot make an assessment without having the amount assessed.

Q. In your judgment does the price of this property—the price that is to be paid for this property—have any effect whatever upon the burdens of the property abutting it?

Objected to as a question of law. Overruled. Exception.

255 GEORGE W. WAITE was then called as a witness on behalf of the plaintiff, and, being first duly sworn, testified as follows:

Direct examination by Mr. DUNLEVY:

Q. What is your name?

A. George W. Waite.

Q. Where do you reside?

A. Hyde Park.

Q. How long have you lived there?

A. 25 years.

Q. What has been your business?

A. Surveying, engineer, and real estate business.

Q. What official position have you held in the town of Hyde Park?

A. I have been town clerk, collector, assessor, trustee, Superintendent of public works, village engineer, and supervisor.

Mr. GREEN: You didn't hold all these offices at once, did you?

A. I held some of them at once, yes, sir; when I was assessor for 6 years I was, *ex-officio*, one of the trustees.

Mr. DUNLEVY: Well, you are well acquainted, then, with the values; are you well acquainted with values of land in the town of Hyde Park, and especially in relation to the south one-half

256 of section 18?

A. I know its topography.

Q. What position have you had with reference to the park commissioners? Had you in 1870 any connection with the park commissioners?

A. I was chief engineer of South Park.

Q. Did you hold the position as assessor under the appointment of court for any purpose?

A. I did.

Q. In what year was it, 1871 or 1870?

A. I was appointed in the summer of 1869 by the circuit court as one of the three commissioners to levy a special assessment on South Chicago—the south side here—Hyde Park and lake.

Q. Were you appointed to make a valuation of lands in this neighborhood at the time?

A. Yes, sir.

Q. You were appointed under the laws of 1879?

A. Yes, sir.

Q. And performed the duties of assessor required by the law; who acted with you?

A. William S. Greenleaf and B. F. Haddock.

Q. At what time after that appointment did you make values of land in the immediate neighborhood of this 80 acres?

A. I think we commenced in the fall of 1869. Now, as to dates, I do not wish to be too positive, but I think we commenced in the fall of 1869, and we were at work at it in 1870, and we were
257 at work at it the time of the big fire—we were at work at it then. Whether we had closed it up or not before the big fire, I am not positive; but I am positive that what we did was all burned up.

Q. I will ask you whether you were one of the parties appointed to make the valuation of the lands lying outside the park?

A. We valued all the lands on the south side and in Hyde Park and in Lake.

The COURT: For this particular assessment?

Mr. THOMPSON: Your honor, the law required that prior to making the assessment they should make a valuation of all the lands lying in the three towns, South Chicago, Hyde Park, and Lake. They should first make a valuation upon the land and then make an assessment, not based upon valuation, but based upon special benefits.

The COURT: Did he help make this valuation?

Mr. THOMPSON: Did he help make this valuation that I am speaking of?

Mr. FULLER: That was burned up.

Mr. THOMPSON: And it was afterwards burned up.

The WITNESS: But I am not certain whether we were at work on it at the time of the big fire or whether we had closed it up before it was burned up; but we made it over again.

Q. Now, in making that valuation what was the basis of the valuation? Did it include the value of all the benefits that had
258 accrued by reason of the park or was it a valuation without reference to the park?

Objected to as incompetent, objection sustained, and exception.

The COURT: The jury understand that this gentleman (the witness) has been in positions to acquire a knowledge of value of property down there, and he was selected under this act as one of the assessors. He acted under that authority, and he gives his opinion now as to the value of property in controversy, and he does it with all these facts before the jury, and I think I will let him do that. I will sustain the objection and let you take an exception. Here is property taken for public use, and the act describes a mode of paying for it. The particular property is appraised, and then the owner is to be paid by levying assessments upon other property supposed to be benefited by the location of the park, and the court appoint persons to appraise the outside property, ascertaining its value in that way. Now, the court does that, and this gentleman (the wit-

ness) was one of the appraisers appointed. He and the other appraisers made a list of all the property, attaching to each piece its value, in their judgment, and they returned that in court. Now, what else is there?

259 Mr. THOMPSON: The amendatory act changed that to this extent: It provided that these South Park Commissioners themselves should make that valuation instead of the assessors; and then, as we shall attempt to show, they did make that, and in making it they took precisely the same figures that these gentlemen had made.

The COURT: What is the amendatory act? Let us see it?

Mr. THOMPSON: Of course, if it was not that way I would concede it at once. I will read, your honor, this act passed in 1871. This is an act approved June 16th, 1871. This is the act under which the assessment was made; it is prior to any assessment being made. There was no assessment made until this act, and this is the act under which the South Park assessment was made. (Act of June 16th, 1871, read.)

The COURT: Well, I will reserve this question. You may go on upon another branch of it.

Cross-examination waived.

260 JONATHAN Y. SCAMMON was then called as a witness produced on behalf of the plaintiff, and, being first duly sworn, testified as follows:

Direct examination by Mr. THOMPSON:

Q. Your name is Jonathan Y. Scammon?

A. Yes, sir.

Q. How long have you resided in this county, Mr. Scammon?

A. This is my 50th year.

Q. Have you been an owner of property in Hyde Park during that time?

A. Yes, sir; in various places; various parts of it.

Q. Were you a dealer in real estate during the years of 1867, 1868, 1869, and 1870?

A. Yes, sir.

Q. I wish you would give us some general idea as to about the size of your transactions of property in Hyde Park, as near as you can—a general idea of the extent to which you have dealt in property in Hyde Park.

A. I should think to an extent, in different tracts, all somewhere from 300 to 600 acres—different pieces.

Q. Where do you reside now?

261 A. Well, I profess to live in Chicago and in Hyde Park too. I live in Chicago in summer and in Hyde Park in winter.

Q. Where is your summer residence?

A. Between 58th and 59th streets; and in Hyde Park, between Woodlawn avenue and Jackson avenue. I believe on the map it is called blocks 72, 73, and 74 of Kinzie's division.

Q. It is about in this position here, isn't it? (Indicating map.)

A. (Indicating.) It is right here; I should say right there, those three blocks there. I am north of Midway Pleasance; 72, 73, and 74, they are the blocks.

Q. How long has been your residence there, Mr. Scammon—in the summer, I mean?

A. I think I improved it in 1869. I think we went down there the next summer after the fire.

Q. But you improved it in 1869?

A. Yes, sir.

Q. You have it all in one enclosure, haven't you?

A. It was enclosed before that, but we made great improvements on it, I think, in 1869.

Q. Have you been familiar with property lying on the lake shore, in Hyde Park, during those years—1867, 1868, 1869, and 1870?

A. I think so.

Q. Have you had any experience with lake-shore property at all?

A. A great deal.

Q. As an owner or otherwise?

A. As an owner.

262 Q. On the south side?

A. Yes, sir; on the south side and on the west shore of the lake.

Q. For how many years were you owner of such property?

A. Oh, 20 or 30 years.

Q. I will ask you what, in your judgment, on the 27th day of August, 1870, or about that time, what was the fair value of the 34 acres in question in this case, lying along the lake shore? (Exhibiting map to witness.)

Objected to.

Q. Are you acquainted with the property down here? (Indicating.)

A. I think so.

Q. How long have you known it?

A. I should think over 40 years.

Q. I am speaking of this shore. Have you been familiar with this shore piece?

A. I have been familiar with all that shore for a great many years—more than 40 years, I think.

Q. As to the value of this 34 acres lying from 59th street to 63rd street on the lake shore, and having its shore lying angularly, of course, over a half mile on the lake shore?

A. Well, in answering that question I should like to say that the value of all the property in Cook county during the 50 years I have been here has been to a great extent speculative, and I can only answer what the market value of it would be.

Q. What it could be sold for in the market?

263 A. What people who dealt in such lands and who operated in such lands considered it worth, and I should say $5,000 an acre.

Mr. FULLER: That is it.

Cross-examination by Mr. FULLER:

Q. Where did you say the property you reside on in summer is situated?

A. It is called on that map 72, 73, and 74 King's Addition.

Q. It lies on what is known as that?

A. Yes, sir.

Q. At what time was that purchased?

A. In 1868, I think.

Q. Was there a very large increase in the value of that property between 1868 and 1870?

A. Oh, yes; all the property down there increased three or four times.

Q. In the vicinity of the park and the park system?

A. Yes, sir.

Q. It was affected by the existence of the park?

A. Of course it was affected by that, but there was a general boom in real estate in Hyde Park from 1869 to 1871, perhaps.

Q. After February 24th, 1869?

A. Yes; I should say after that; after it became certain that the park was to be down there there was a very large boom.

Q. Now, in the valuation you have given us your judgment about the lake shore price; can you recall what the situation of that piece was in 1870?

264 A. I think I can. I have been over there often, and I think I know exactly how it was. There were large piles of sand on the shore, not as large as they are at Michigan City, but large piles of sand there, and then sometimes when an adverse wind would come the sand would be taken away, but as a general thing the shore was increasing and extending out into the lake by deposits of sand, and that was the case all along the shore, clear up to 35th street, at that time.

Q. Up to 35th street?

A. Yes, sir.

Q. Do you mean from the piece we are speaking of north to 35th street? (Map shown to witness.)

A. I mean all along on that shore there (indicating) there was an accumulation of sand.

Q. That is not exactly an answer to my question. Do you recall the situation of that there (indicating), that piece there, in August, 1880; was there any marsh on it?

A. Yes, sir.

Q. Any bulrushes there?

A. I don't recollect particularly about bulrushes.

Q. What was the general growth?

A. That is the general character of a marsh; there is generally bulrushes.

Q. Was there any on the land there?

A. Yes, sir; there was.

Q. Do you recollect where?

A. Well, I think in the southeast portion of it there (indi-
265 cating) there were oaks and poplars and some high land, and I think there was some high land with trees on it up nearer the north end of it.

Q. To any considerable extent at the north end, would you say?

A. I don't how many, but I am sure there were some trees there; but it was like a lot of land lying on the lake shore; there was a pile of sand ——

Q. It is the same, isn't it, as far as down to Michigan City?

A. Well, there is a great similarty in the whole of the lake shore, or was in the early times, from 35th street down.

Q. You have not stated that valuation as based on the adaptability of that particular tract for residence purposes, have you?

A. Well, it was a speculative value; in those times it was believed that property near the lake shore was exceedingly valuable and easier made into residences, or for almost any other use; that the only beauty of Chicago was the lake shore property; this always has been valued vastly greater than any other.

Q. What do you mean by speculative value; you mean to sell the property upon the chance that it will rise?

A. I mean the value there is in it; the relative amount of money there is in it, just as the relative value of pork and beans.

Q. Or stocks?

A. Yes; whatever people are operating in.

266 Q. Was there a great deal of activity between the spring of 1869 and the summer of 1870?

A. I think there was a great deal.

Q. You have said that north of 35th street it was about the same?

A. There was some places that it was sometimes higher—like the old South Park Hotel was very low.

Q. You said as far north as 35th street, I understand you.

A. I said there was a rise in some places.

Q. Were there any piers along the shores, do you remember?

A. I don't recollect when the first pier—there was no piers along there that I recollect of, excepting those that were built by the town of Hyde Park; but I do not recollect exactly when that was done; there was a little pier built at the end of several streets down there to protect sewerage, but at what time I don't know, and I am not sure that there was a little pier there, and I am not sure there was a little pier there that was used by some fisherman.

Q. What was the system of drainage at that time, 1870, or was there any system of sewerage?

A. I don't think there was any system of sewerage, but I cannot recollect the date when the first sewer was put down; but there was a sewer or outlet from the north end of that tract, and there was another one further down.

267 Q. Now, you have said that your dealings were from 300 to 600 acres during 1869 or 1870?

A. Not in 1869—all I ever had in South Park——

Q. What dealings did you have in 1869 and 1870? You need not specify them, but give them to us in a general way.

A. I have had occasion to look up a great deal of property in which I was interested in there in connection with corporation or owned personally to a great extent in the village of Hyde Park.

Q. What corporations?

A. Well, the Chicago Marine & Fire Insurance Company is one.

Q. A marine company?

A. A marine company. It was named the Chicago Fire & Marine Insurance Company.

Q. The Mechanics' National Bank?

A. No; I don't think the Mechanics' National Bank had any real estate there at that time. I don't recollect that. I doubt that, but I was there loaning a good deal of money on mortgages, sometimes for corporations and others, and I had occasion to look up Hyde Park property a good deal.

Q. In 1869 and 1870, do you mean?

A. Yes; I mean 1869 and 1870.

Q. How long ago is it since you owned any property on the lake shore?

A. Well, that depends upon the termination of lawsuits, when they are going to end.

Q. Have you acquired any within ten years, for instance?

268 A. I don't think I have.

Q. Whatever interests you now allude to were acquired years ago?

A. Yes, sir.

Q. Have you made any special examinations of values with a view to giving your testimony in this case?

A. No; well, I cannot say. I say both yes and no. I have been repeatedly called as a witness in relation to the value of property down there. I was called once before in this case, and I have been called in one or two suits before in relation to the value of some property down there in the park, and every time that I have been called as a witness, until this time, I have endeavored to refresh my recollection, and in some instances I have been on the property and looked at it for the purpose of being more certain about the facts which I had to testify to.

Q. Do you include in your basis of judgment the value of supposed accretions?

A. Well, I suppose so. I include everything in connection with it.

Q. Did you ever make any computation to see what it would take to fill that tract?

A. I never did, but I saw there was a good deal of sand there that would fill up the holes very readily.

Q. Did you make any specific calculations?

A. I did not make any specific calculation, but I formed

269 my opinion from my general knowledge.

Q. Can you state what the general direction of the current down there is?

A. Well, the general direction of the current is, I should say, in 1869 or before that, it was in the southeasterly direction—I mean southwesterly—and it piled up the sand on the lake shore; but

after the construction of the piers on the harbor and the building of so many other works, the current was so changed that instead of piling up sand it cut it out.

Q. In what direction does the current strike, or did it strike the land in 1870?

A. Let us see; it must have been. The current must have run in the southwesterly direction.

Q. Did it strike it perpendicularly?

A. It didn't strike it always alike. I have had a great deal of experience, you know, at the foot of 35th street.

Q. Never mind about that.

A. One current would come and pile up sand and another would come and cut it out. The current was not uniform at all, and it depended upon the extent of the piers out into the lake and so many other circumstances that you could not say it; but the average up to 1870 was to increase the quantity of sand and the quantity of soil all along the lake shore down to the mouth of the Calumet river.

270 Q. Where did the sand come from—that is, from your observation?

A. It was said to come——

Q. No; your own experience.

A. I went up to Evanston, and I found the bank was wearing away there and drifting down, and I found the sand drifted around the new pier and dropped down two or three miles below the pier on the south side.

Q. What pier are you speaking of?

A. I mean the Government piers.

Q. When was the north pier constructed?

A. I should say they began to construct the north pier in 1875, when I first came here.

Q. Did that have any effect in stopping the flow, or whatever it was, from Evanstown—from the north side?

A. It cut it and piled it up on that land that you call Ogden Slip; but, nevertheless, the sand would sweep around.

Q. The object of my question was to get at this: Would not whatever came around the north pier be lighter rather than heavier—the boulders coming around there—from your observation?

A. My observation is this, that I knew very little about currents of water, and I never did find anybody who knew much about it. I found out from my experience on the lake shore that no two streams is like the other; sometimes a great deal of coarse boulders

271 of stone, such as you would use in making walks, are brought; another would bring a coarse gravel, which we sold to men to put on the roofs, and another one would bring very fine sand. I do not know, and I never have found anybody else that did know, what special currents produced this effect.

Redirect examination by Mr. THOMPSON:

Q. This average result of accumulation, as I understand you, continued until the building of the Government pier south, is it not?

A. Well, I think that those accumulations—yes, I should say that

that is so—but every time a new pier, whether it was put up by the Illinois Central or by the Government—any way, every time I have watched this lake shore, because we have had an interest ever since 1839, and every new pier that would be put out the currents on the lake shore would be changed, and it is a subject I have expended a great deal of time on and talked a great deal with the officers of the Illinois Central and others, and the only thing we knew was that we did not know anything certain, excepting that certain currents would increase and certain others decrease, but we knew for years and years that, say from 35th street down to South Chicago, there was a general increase of the sand and land on the lake shore, and that the building of these piers gradually changed the cur-
272 rent, and when the Government extended their piers out so far and the Illinois Central extended theirs it began to cut out and wash away lower down.

Mr. THOMPSON: Which pier was that. You mean the pier on the south side of the harbor?

A. Yes, sir.

Q. Do you recollect the date when that was done?

A. They had been doing it all along.

Q. Wasn't it after the fire that that pier was made?

A. They had been to work on those piers ever since I have been in Chicago.

Q. But the pier that was extended south?

A. I don't recollect the date when it was commenced.

Mr. FULLER: It had been commenced long before the fire, hadn't it?

A. They have been building piers ever since I have been in Chicago, and I should say they commenced—*to* my recollection, without knowing exactly—would be, that they commenced it before the fire.

Adjourned to 2 p. m.

273 DEC. 5TH—2 p. m.

FREDERICK L. FAKE was then called as a witness on behalf of the plaintiff, and, having been duly sworn, was examined in chief by Mr. THOMPSON, and testified as follows:

Q. What is your business?

A. Real estate broker.

Q. How long have you been engaged in that business in this county?

A. 20 years.

Q. Were you so engaged from 1867 to 1870, inclusive?

A. Yes, sir.

Q. Do you know the property that is involved in this suit?

A. I think I do.

Q. It is the 80 acres lying between 59th and 63rd streets fronting west on Stony Island Ave. and then the 34 acres lying on the lake shore?

A. Yes, sir.

Q. Were you familiar with the value of property in that neighborhood in August, 1870?

A. I think *it* I was.

Q. Had you had transactions in Hyde Park?

A. Yes, sir; for many years.

Q. Did you have since 1870?

A. Yes, sir.

274 Q. What, in your opinion, was the fair cash market value of the 80-acre piece I have described to you, in August, 1870?

A. From $4,500 to $5,090 an acre.

Q. What was the value of the 34 acres on the shore at the same time?

A. About $1,000 an acre more.

No cross-examination.

275 WILLIAM L. GREENLEAF, a witness on behalf of the plaintiff, was then called, and, having been duly sworn, was examined by Mr. THOMPSON, and testified as follows:

Q. I want to ask this witness the date at which the special assessment of the South Park was confirmed. I can bring in the record of the circuit court to show the date of confirmation, if necessary. Do you remember the date at which this act was submitted to the people for a vote?

A. I do not remember the precise date; it was in March.

Q. March 23, 1869; that is agreed upon, is it not?

We now offer a certified copy of a map, showing the subdivision as it existed at the time in 1870, and as showing the general surroundings of the property.

By the COURT: Is there any objection to that?

Mr. GREEN: We do not know anything about this map.

The COURT: This is a map they have been using all the time, I understand.

The map is admitted in evidence, but it is understood the coloring is not a part of the original map.

(Here follows map marked p. 275.)

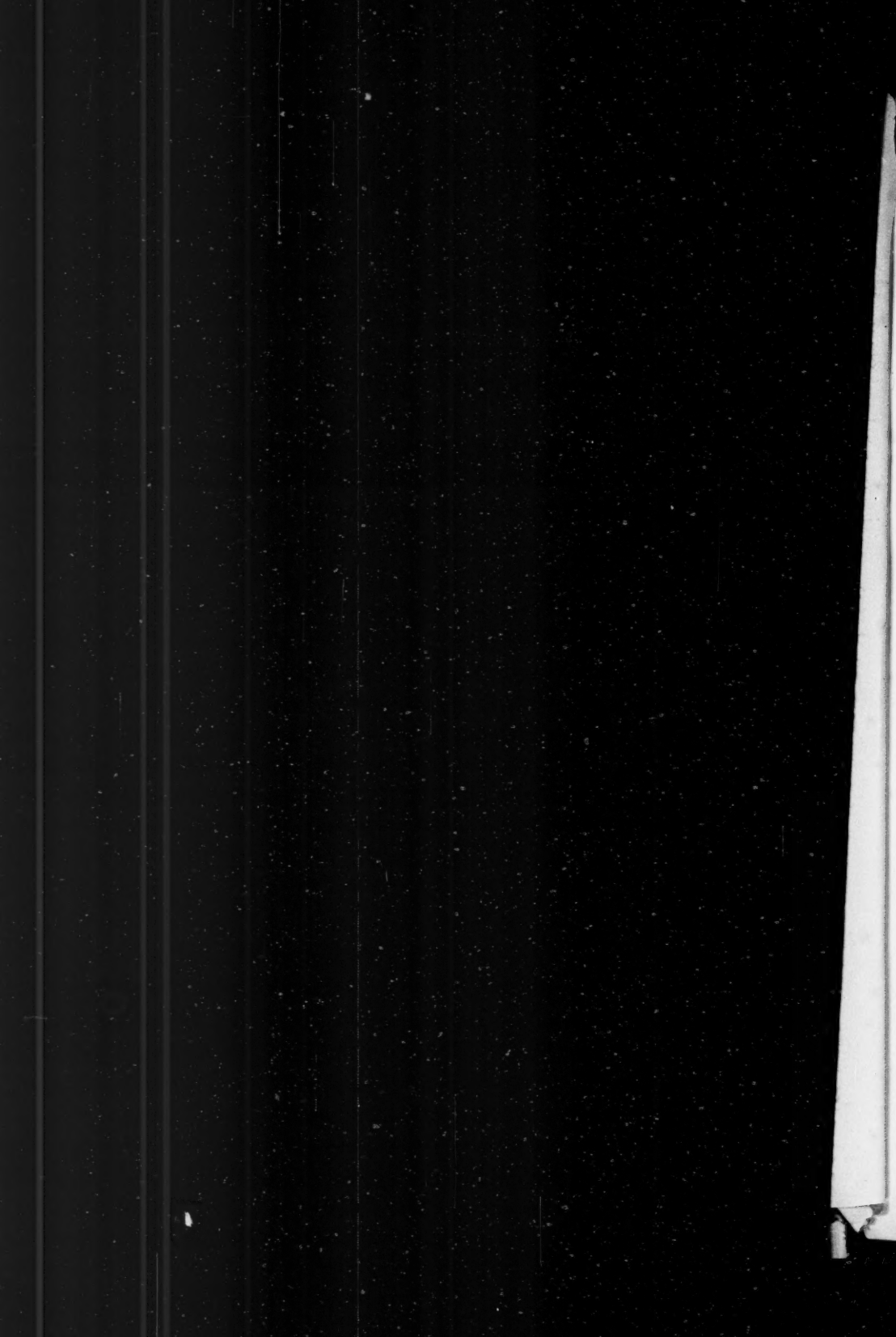
Counsel for plaintiff produced the original assessment roll, which was shown to the witness.

276 Q. On what day was a special assessment for benefits conferred by the location of the South Parks confirmed by the circuit court?

A. On the 27th day of June, 1872.

Mr. THOMPSON: We now offer the valuation of the property lying within half a mile of the property proposed to be taken on Stony Island Ave., made by the South Park Commissioners and reported to the court. We offer the record of that. We also offer to prove by the witness the date upon which that appraisal was made; we would have to do that by actual testimony.

Mr. FULLER: We object to this proof.



The COURT: This is the report which you said this morning you would offer.

Mr. THOMPSON: Yes, sir; and I will ask the witness one or two questions bearing upon that matter.

Q. When was the estimate of valuation of the property lying outside of the limits of the park near where the land in question is made first?

A. For this second assessment?

Q. For the first assessment.

Mr. FULLER: I object to that; we have nothing to do with the first assessment.

Mr. THOMPSON: This is preliminary, and I will correct it with this matter.

Mr. GREEN: We would like to save the question that it is immaterial.

The COURT: Go on and answer the question.

A. It was made some time between the 1st of July and the 1st of December, 1870.

277 Q. That was made by assessors, was it not?

A. Yes, sir.

Q. Were you one of those assessors?

A. I was.

Q. Did you have anything to do with the making of the second valuation that was made and signed by the commissioners?

A. Yes, sir.

Q. Who assisted you in that?

A. The assessors of South Chicago, Hyde Park and lake, and Mr. Geo. W. Waite.

Q. Do you remember whether that second assessment, so far as your memoranda and memory serves you, was the same as the prior one?

Objected to.

The COURT: I think we had better stop with this until I dispose of the main question.

Mr. THOMPSON: May I say, as I suppose I shall be able to show, they were the same, the first assessment being destroyed and the second assessment being like it?

Mr. STORRS: Your honor has suggested you will deliberate on the question to-night, which is well, but before a decision is announced upon it we would like an opportunity of being heard, of course.

278 ASAHEL EMIGH was then called as a witness on behalf of the plaintiff, and, being first duly sworn, was examined by Mr. Thompson and testified as follows:

Q. Did you sell to the South Park Commissioners a piece of ground lying between 59th and 60th streets, and between Adams street, the first street west of the railroad, and Stony Island avenue?

A. The boundary on the west is not Ada St., but Madison Ave; of the property I sold, I sold as an owner of an one-third undivided

Commencing at the southwest corner of Fifty-first street and Cottage Grove avenue, running thence south along the west side of Cottage Grove avenue to the south line of Fifty-ninth street; thence east along the south line of Fifty-ninth street to the east line
283 of Hyde Park avenue; thence north on Hyde Park avenue to Fifty-sixth street; thence east along the south line of Fifty-sixth street to Lake Michigan; thence southerly along the shore of the lake to a point due east of the center of section twenty-four (24), in township thirty-eight (38) north, range fourteen (14); thence west through the center of said section twenty-four (24) to Hyde Park avenue; thence north on the east line of Hyde Park avenue to the north line of Sixteenth street, so called; thence west on the north line of Sixtieth street, so called, to Kankakee avenue; thence north on the east line of Kankakee avenue to Fifty-first street; thence east to a point to the place of beginning; also a piece of land commencing at the northeast corner of Kankakee avenue and Fifty-fifth street, running thence west a strip two hundred feet wide south and adjoining the north line of said Fifty-fifth street; along said Fifty-fifth street to the line between ranges thirteen (13) and fourteen (14) east; thence northeast of and adjoining said line a strip two hundred (200) feet wide to the Illinois and Michigan canal; also a parcel of land beginning at the southwest corner of Douglas place and Kankakee avenue, running thence south a strip of land 132 feet wide along the west side of said Kankakee ave. to a point 150 feet south of the south line of Fifty-first street; also a strip of land commencing at the intersection of Cottage Grove avenue and Fifty-
284 first street, running thence east 100 feet in width on each side of centre line of Fifty-first street to a point 100 feet east of the centre line of Drexel avenue; also a strip of land extending north from the intersection of Fifty-first street with Drexel avenue 100 feet in width on each side of the centre line of said avenue to the north line of Forty-third street; thence northerly a strip of land 200 feet in width till it meets or intersects with Elm street, in Cleaverville; thence northerly along said Elm street 200 feet in width west from the east line of said street to its intersection with Oakland avenue; said lands situate in and being a part of sections two (2), three (3), six (6), seven (7), eleven (11), fourteen (14), sixteen (16), seventeen (17), and eighteen (18); the southeast quarter of section 10 (10), and all of fractional section thirteen (13) except the north twenty-four $\frac{63}{100}$ acres; the northeast quarter of section fifteen (15), the north half of section twenty-four (24), in township thirty-eight north, range fourteen east, and parts of sections thirty-one (31) and thirty-four (34), in township thirty-nine (39) north, range fourteen (14) east.

In testimony whereof witness my hand and the corporate seal of said South Park Commissioners, this 25th day of October, 1883.

[SEAL.] H. W. HARMON,
Secretary South Park Commissioners.

285 GEORGE W. WAITE, a witness, called on behalf of the defendant, was examined by Mr. Fuller, and testified as follows:

Q. Were you acquainted with Alexander Wolcott?
A. I was when he was alive.
Q. When did he die?
A. I cannot give you the date, but some time last summer.
Q. He was county surveyor, was he not, of this county for many years?
A. He was.

Mr. FULLER: I now offer in evidence the testimony of Mr. Wolcott, taken on the first trial of this case.

Counsel for defendant then read to the jury the testimony of Alexander Wolcott as given in the former trial of this case, which is as follows.

Adjourned to 10 a. m. Dec. 6th.

286 (Map marked Exhibit A to this deposition is objected to.)

Mr. FULLER: There is no objection to this tracing map?
Mr. THOMPSON: I don't see any objection.
Mr. FULLER: The brown paper map we do not insist on.

ALEXANDER WOLCOTT, a witness called on behalf of the defendant, being first duly sworn, was examined in chief by Mr. GREEN, and testified as follows:

Q. What is your name?
A. Alexander Wolcott.
Q. What is your business, Mr. Wolcott?
A. Civil engineer and surveyor.
Q. How old are you?
A. 68.
Q. How long have you resided in this county?
A. 49 years.
Q. What has been your business during all that time?
A. Engineer and surveyor.
Q. Have you ever held any official position in that respect in this county?
A. County surveyor.
Q. How long?
A. It will be 28 years the first of December.
The COURT: That you have held the office 28 years?
A. Yes, sir.

Mr. GREEN: He is one of the institution- here. The prop-
287 erty in controversy in this suit is the west 80 acres of the southwest quarter of section 13, town. 38 north, range 14 east, of the 3rd principal meridian; do you know that piece of property?
A. Yes, sir.
Q. How many acres is there in that piece?
A. A little over 80 acres.
Q. Where is it situated?

A. It is situated on Blue Island avenue between——

Q. What?

A. In the town of Hyde Park, between 59th street and 63rd. It fronts west on Blue Island—on Stony Island avenue; the other piece is the southeast fractional quarter of the same section.

[Q.] Do you know that piece of property?

A. Yes, sir.

Q. Have you ever been upon that piece of property?

A. Yes, sir.

Q. About when was the first time that you set foot upon it?

A. The first time, I think, was in 1856.

Q. For what purpose did you go upon it in 1856?

A. I surveyed it for Mr. Phillips.

Q. The whole tract?

A. Yes, sir; the Phillips tract.

Q. Did the Phillips tract, as you understand it, include both of these pieces that I have called your attention to?

288 A. Yes, sir.

Q. You therefore surveyed both of these pieces in 1856?

A. Yes, sir.

Q. Did you ever survey it again?

A. I surveyed it in 1869. I think either 1869 or 1870, the next survey that I made there.

Q. Did you ever survey it again?

A. Yes, sir; I surveyed it in 1876.

Q. Who with?

A. George W. Wait.

Q. The Mr. Waite that has been on the stand here as a witness?

A. I think so. I suppose he was on the stand.

Q. Did you ever survey any portion of this west 80 — for the purpose of making a subdivision?

A. No, sir.

Q. Do you know any of this west 80 — being platted into lots?

A. No, sir; I never heard of it.

Q. Do you remember a man by the name of Bixbee in your employ?

A. Yes, sir.

Q. Do you remember his platting 26 acres there on Stony Island avenue?

A. No, sir.

Q. Well, it is immaterial. Now, in 1870, what was the condition of that west 80 acres as compared with the present time?

289 A. Well, I should say it was about the same thing; I can't see any difference.

Q. Did you take levels in 1870 of that west 80 acres?

A. No, sir; I did not.

Q. Has the conformation of the ground changed any between 1870 and the present time of this west 80 acres?

A. No, sir; I should say not.

Q. Have you made a topographical map of that 80 acres as it now appears?

A. Yes, sir.

Q. Will you produce it. Does that also include a topographical map of the shore piece?

A. Yes, sir.

Q. As it now appears?

A. Yes, sir.

Q. Does this map accurately show the topography of this 80 acres?

A. Yes, sir.

Q. Does it at present show the present topography of the east shore piece?

A. Yes, sir.

Q. This east shore piece it is topographically substantially the same now as it was in 1870—that is, what is left of it?

A. What is left of it is.

Mr. GREEN: We now offer this map in evidence.

Objected to. Objection overruled. Exception.

Here insert Walcott's map.

(Here follows map, marked p. 289.)

290 Q. Upon this map, Mr. Walcott, I observe a number of figures in red ink; what do they denote?

A. They denote the elevation of the ground by the city datum.

Q. That is where it says there four feet and three-tenths; does that mean that the ground at that point is 4.3 above city datum?

A. Yes, sir.

Q. So where it is 3.8, that means that it is three feet and eight-tenths above city datum?

A. Yes, sir.

Q. Now, when was city datum established?

A. That was in 1847.

Q. And what did the city datum establish?

A. The low water of 1847.

Q. That is, the city datum is the lowest point that Lake Michigan reached in 1847?

A. Yes, sir.

Q. How does Lake Michigan now compare, usually with city datum?

A. It is 2 feet 6-tenths higher, it was Friday, than city datum.

Q. 2.6 above city datum?

A. Yes, sir.

Mr. THOMPSON: To-day you mean?

Mr. GREEN: No; he don't say to-day, he says usually.

Q. Is it ever higher than that?

A. Yes; it has been four feet above the city datum.

291 Q. Well, take one year with another, what would be the usual highest point of Lake Michigan above city datum?

A. Well, there are no two years alike.

Q. How often does it get to be three feet above city datum?

A. About once in six years.

The COURT: That is to make it nine feet high, you mean?

A. No, sir; to make it seven and a half feet high*t*.

Q. That would make it how high above city datum?

A. Seven and a half feet.

Q. How would that make it compare with the present height*h* or grade of Stony Island avenue?

A. About the same thing.

Q. Now, in order to make that grade, would it be possible to take anything off of these ridges—off the crown of these ridges?

A. Take about nine inches off to make that seven feet and a half high; take about nine inches off the crown of the ridge.

Q. Have you put that in your estimate of the filling?

A. No, sir.

Q. How much, then, would the ridges themselves furnish of this filling?

A. Take about 25,000 yards off the ridge.

Q. So that in order to fill that you would have to bring there 265 cubic yards of filling?

A. Yes, sir.

Q. 265,000?

296 A. Yes, sir.

Q. And that——

Mr. THOMPSON: I object to your asking all of the time leading questions.

Q. And if that was brought there and the 275,000 cubic yards of filling, and 25,000 taken off the crown of the ridges, what grade would it bring that land to as compared with the present grade of Stony Island avenue?

A. It would be the same grade of Stony Island avenue. I calculated it as the same grade.

Q. Do you know where that filling could be obtained to fill that, or could have been in 1870?

A. It might have been obtained a mile south of there, on the lake shore.

Q. Could it not have been obtained from the lake shore immediately east of this property?

A. No, sir.

Q. Why not?

A. Because the lake shore that time was lower than seven feet and a half above grade.

Q. Above datum, do you mean?

A. Above city datum.

Q. Generally the land in Hyde Park, say half a mile from the lake shore—land that is now improved—at what hight*h* does the water stand in that land?

297 A. I don't understand your question, Mr. Green.

Q. In the improved land in Hyde Park how deep would you have to dig to get water?

A. Well, about from eight to twelve feet.

Mr. THOMPSON: Whereabouts in Hyde Park—Hyde Park is a very big place?

A. I don't mean how deep; I mean in comparison with the hight of the water in the lake.

A. Well, you would strike water anywhere in Hyde Park—anywhere at the hight of the level of the lake.

Q. Is that a permanent condition of things?

A. Yes, sir.

Q. Why is that so?

A. Because the substructure of the ground there is composed of the sand and gravel, the water from the lake percolates through it, and the water that you would strike you would strike in the same level as you would strike the lake.

Q. And that is, I understand you to say, the permanent condition of things?

A. Yes, sir.

Q. Do you remember the condition of this lake-shore piece in 1870?

A. Yes, sir.

Q. About how many acres was there then, oh about?

298 A. Between 30 and 40, my recollection is.

Q. How many acres are there there to-day?

A. There is ten acres and thirteen hundredths.

Mr. THOMPSON: I object; I don't know what that has to do with it.

The COURT: I think perhaps the evidence is competent as showing the jury the difference between the land in 1870 and what it is now, so they will understand it as they see it.

Q. As of what day is this ten acres and a fraction that you speak of?

A. 26th of October; you mean how much there was there?

Q. On the 26th of October there was how much land there?

A. Ten acres and thirteen hundredths.

Q. In this east fractional section?

A. Yes, sir.

The COURT: This 34 acres?

A. Yes, sir.

The COURT: All washed away but the ten acres, is it?

A. Yes, sir.

Q. I observe red figures upon that map of that piece of land; what do they designate?

A. The levels above city datum.

Q. That is where it is put here as three feet and three inches or 3.3, that means three feet and three-tenths above city datum?

A. Yes, sir.

299 Q. Now, in 1870, what was the condition of that level as to its level above city datum—the 34 acres?

A. I should say it is the same as it is now.

Q. The same as the balance is now?

A. Yes, sir.

Mr. THOMPSON: You say what is left of it now is precisely the same as it was in 1870?

A. What is that, Mr. Thompson?

Q. In 1870 what was there in the southeast corner of this fractional piece?

A. The southeast corner?

Q. Yes.

A. There was a small clump of timber in there about—well—I should say about an acre.

Q. Have you observed from 1870 that the land has been blowing in on that land very much?

A. No, sir.

Q. Has it been raised any by the action of the waives?

A. No, sir.

Q. Have you made a calculation, Mr. Wolcott, as to how much it would have taken in 1870 to have filled this 34-acre tract to the same level above city datum as you have given for the west 80-acre tract?

A. No, sir; I have not.

Q. You hav-n't made any calculation?

300 A. No, sir.

Q. I wish you would before you go away, and give it to us. Mr. Wolcott, I will now show you a map which has been introduced in evidence, a topographical map of this district, as a topographical map of 1862, and I ask you if you have ever seen this?

A. Yes, sir; I have.

Q. Did you have anything to do with the making of the map?

A No, sir; not with the map, but I helped to make the survey.

Q. Well, on this map there is a ridge designated at the south portion of it as pasture lot-; is that the same ridge that is designated on your map as the eastern of the two ridges?

A. Yes, sir.

Q. And that east line, as I understand it, then, commences where, in reference to this ridge upon the Waite's map, designated as pasture lots?

A. About 32 feet.

Mr. THOMPSON: Mr. Green, I shall have to ask you to put your questions so that an answer of Yes, sir, and No, sir, will not at all times be an answer.

Q. Well, that question is not objectiona-l-. About how far did you say?

A. 30 feet east of it, about.

Q. What is the condition of the lake shore, with reference to being a ridge, now in comparison to what it was in 1870?

301 A. About the same thing.

Q. What is the action of the waves in making a ridge upon the lake shore, do you know?

A. Well, in that portion?

Q. Yes.

A. In that portion there is a low ridge there; it is about three feet above the water, and, well, in the last storm the water washed

right over it. It had every indication of washing right over into the land—right over the ridge for half a mile there.

Q. Now, Mr. Wolcott, do you know the means that would have to be resorted to to protect the lake shore from being washed away?

A. By building a breakwater.

Q. Do you know? I ask you that question for yes or no.

A. Yes, sir.

Q. Now, did you know in 1870—that is, do you know what would have been required in 1870?

A. Yes, sir.

Q. What would have been required?

A. Breakwater.

Q. Wait a moment. To protect that lake shore from being washed away?

A. A breakwater the whole length of the piece for half a mile.

Q. Simply a breakwater north and south; would that have done it?

A. Yes, sir. Well, diagonally with the line.

302 Q. What else would have been needed besides that north and south breakwater diagonally to the land?

A. Well, put in a pier there at 63rd street, extend it out about half a mile, and that would help make the shore, but it would decrease the shore below.

Mr. THOMPSON: It would what?

A Decrease the shore below it.

Mr. GREEN: That we don't care for; that is somebody else's land.

Mr. THOMPSON: No; that is your land.

Q. Do you know what the expense of such a pier would be or breakwater?

A. It would be about $15 a foot.

Mr. THOMPSON: He don't say that he knows.

Q. Well, do you know, about?

A. Well, about. I think that in 1870 it would cost about $15 a foot.

Q. A running foot?

A. Yes, sir; a running foot.

Q. What is the character of this breakwater you speak of; just tell us how it would have to be constructed to withstand the action of the waves?

A. It would either have to be constructed by cribs and piles driven or by a continuous line of two piles bolted together, about 14 feet apart, and filled with stone?

Q. Have you ever had any experience with filling land?

A. Yes, sir; I have.

Q. Did you have any experience prior to 1870?

303 A. Yes, sir.

Q. How large an experience?

A. I was on the Illinois and Michigan canal and also on the Illinois Central railroad, well, for seven years altogether, civil engineer.

Q. How much would it have cost in 1870 per cubic yard?

Mr. THOMPSON: Ask him if he knows.

Q. He has already said that he had experience; it is supposed that he knows if he has had experience. Do you know how much it would cost in 1870 per cubic yard to fill this land, giving an average haul of half a mile, and allowing nothing for the cost of the material but to dredge it out from some place or other?

A. It would cost about 50 cents a yard.

Q. Per cubic yard?

A. Yes, sir.

Q. If the material had to be purchased, how much would it cost?

A. It would cost about a dollar and a half.

Q. Where did you say they would have to get the material if they purchased it?

A. About a mile and a half south on the lake shore.

304 Cross-examination by Mr. THOMPSON:

Q. Mr. Wolcott, this map, which was shown to you, that was made by Mr. Waite, you say you helped him make that survey?

A. You will have to get up near here, Mr. Thompson, or I can't hear you.

Q. I will speak loud and I want you to speak so I can hear you.

A. I will do it.

Q. The map that was shown you, made by Mr. Waite, is a map, the survey for which you helped him make?

A. Yes, sir.

Q. Does that map represent, as you remember it, that survey?

A. I suppose it did.

Q. Well, you saw it after it was made, didn't you?

A. No, sir; I did not; I don't remember of ever seeing it until now.

Q. On the map which you have brought here how many roads and ditches do you show on the west 80 acres?

A. I show one ditch.

Q. As inside of it?

A. I show one ditch.

Q. Is that all that you found there?

A. No, sir.

Q. Why didn't you show the others?

A. I didn't know that they wanted them.

Q. You didn't know that they wanted them?

305 A. No, sir.

Q. You didn't show the roads you found?

A. No, sir.

Q. And didn't show the other ditches?

A. No, sir.

Q. Were you directed to show that ditch alone?

A. No, sir; I was not directed to show it at all.

Q. Now, I see that you have taken a level. Do these red figures indicate the position at which you took the levels?

A. Yes, sir.

Q. How did you take them?

A. I took them every hundred feet apart, except the first 1,200 feet north of 63rd street.

Q. And the balance 100 feet apart?

A. Yes, sir.

Q. And now, did you not in taking those levels go right down the lower part of it?

A. No, sir.

Q. Was there any part of it lying east lower?

A. Yes, sir.

Q. Are you sure?

A. Yes, sir.

Q. Was there any part lying west of it that was lower?

A. No, sir.

306 Q. Did you not take these levels down along the line, or substantially along the line, of the ditch which runs north and south?

A. No, sir; I did not.

Q. How far did you get away from it?

A. I am about 50 feet west of it to start with, and I am just east of it at the north end.

Q. You are; why didn't you show it so on the plan?

A. I do.

Q. No. Do your figures on the plan correspond with what you now tell me?

A. Yes, sir.

Q. Now, look at it; look here, along here, and tell me if you have shown on that plan a single place where you took datum along west of that ditch?

A. No, sir; I don't show that land at all.

Q. You don't show what land?

A. The line which I took the levels on.

Q. Don't you? Just see these figures; they were placed on the map to indicate the point at which you took the levels?

A. Certainly.

Q. Then, if they do, they show the line on which you went, do they not?

A. I took them at the—on 63rd street; I took them at 65 feet west of the ditch.

307 Q. Did you take any levels east of that ditch?

A. Yes; I did.

Q. Do you show them?

A. I don't show them on here at all.

Q. Do you show a single level which you took east of that ditch?

A. No, sir.

Q. Now, I will ask you again, is the dirt that was thrown from that ditch thrown up on the bank?

A. Yes, sir.

Q. And did you not take those levels just away from that dirt where that bank was made?

A. No, sir.

Q. Just west of it?

A. No, sir.
Q. How far west were you?
A. 65 feet.
Q. Then your line of levels is 65 feet west of that ditch?
A. Yes, sir.
Q. Did you get just 65 feet west of it?
A. No, sir; I did not. I ran due north.
Q. You ran due north?
A. Yes, sir.
Q. Did you walk across there yourself?
A. Yes, sir; I did.
Q. Did you set the stake? I will ask you this: How did you take those levels?
308 A. I took them—the first level I took——
Q. I don't mean where did you take them; how did you take them; you took them through a leveling instrument?
A. Certainly; by a level and rod.
Q. You had a man go along and set that rod?
A. Yes, sir.
Q. How large was—where was the point of the rod?
A. On the surface of the ground.
Q. You didn't hold it?
A. No, sir.
Q You had a man hold it?
A. Yes; I had a man hold it.
Q. And on that rod you had a sliding signal, to which you looked with your instrument?
A. I had a target.
Q. How large was the bottom of that pole at which you looked?
A. Two inches and a half square.
Q. When he set that down did you have him see that he was avoiding any little hollow or did you have him careful to avoid setting it on any hillock?
A. I did. I was with him all the time, and I cautioned him about that.
Q. You were with him when you looked through the instrument?
A. I did not look through the instrument?
Q You did not look through the instrument?
A. No, sir.
Q. And you did not hold the pole?
309 A. No, sir.
Q. And you are simply giving us what they told you?
A. Certainly.
Q. Did you mire any when you went across there?
A. No, sir.
Q. It was the turf, was it not?
A. Yes, sir.
Q. All of it?
A. Yes, sir; and been mowed.
Q. Been mowed all over it?
A. Yes, sir.

Q. And didn't you see wagon tracks over there?
A. No, sir; it had been mowed.
Q. Didn't you see the wagon tracks where wagons passed in there to haul the hay off?
A. No, sir; you could not see it.
Q. You could not see it?
A. No; it was six inches under water.
Q. It was six inches under water?
A. Yes, sir.
Q. At the time you made this survey?
A. Yes, sir.
Q. The whole distance?
A. About three-quarters of it.
Q. Now, how wide was that water?
A. West of the slough it was——
Q. I am speaking about the west 80 acres; how wide a strip was covered with water?
310 A. West of the ditch it would average about 70 feet; east of the ditch it would average about 125 feet.
Q. And that was an average, taking it clear across, north and south, on the edges?
A. No, sir; that was an average for about 121 feet.
Q. Where was it widest, at the north end?
A. Then, after that, it was just about on a level with the water.
Q. The ground itself?
A. Yes, sir; just about a level with the water.
Q. That is, there wasn't any six inches of water; the top of the ground was just about level with the water?
A. Yes, sir.
Q. Where was that, on the south end?
A. That was north of that ditch; the north ditch.
Q. Of the north ditch, running east and west?
A. Yes, sir; that is, it don't run east and west; it runs northwest and southeast.
Q. Now the tract in question, is this west 80 across here (indicating)?
A. Yes, sir.
Q. Now, this ditch you speak of *a* here, runs up there; now, you took your measurements down along here (indicating)?
311 A. Yes; when I got up here at 59th street, I was across the ditch, the other side of it.
Q. The ditch has been filled up—the north end?
A. Yes, sir.
Q. That ditch don't extend up to the 59th-street ditch?
A. No, sir. You can see the traces of it.
Q. But it does not any longer exist there?
A. No, sir.
Q. Now, did you notice any ditches cutting into the 59th-street ditch upon this 80?
A. No, sir.

Q. Did you notice any ditch emptying into the 63rd-street ditch upon this 80?

A. Yes, sir.

Q. Did this ditch empty into 63rd street?

A. This is 63rd street.

Q. Was that ditch open into 63rd-street ditch when you were there?

A. Yes, sir; the ditch opened in 63rd street—the north ditch; both of them did—that ditch and that ditch.

Q. Well, was that 63rd-street ditch open?

A. It was not open down here to the lake.

Q. Was it open anywhere where it could empty out?

A. No, sir.

Q. In starting from this ditch you speak of, and going over
312 here, there was water in here, wasn't there? (Indicating.)

A. There was water south of the ditch; there was no water north of the ditch at all—that is, you would step on, and when you pulled your foot up you could just see it was moist and perceive the water under your foot.

Q. Did you notice how far there was a hard, close turf running rom these ridges down towards what you call a slough?

A. Yes, sir; about 70 feet wide. I measured it in three or four places. It would average about 70 feet wide.

Q. Didn't it go any further than that?

A. It extends the whole length of the ridge.

Q. I mean after you get beyond the timber. Now, taking the last line of the timber—the last of the trees—how far was it from there until you got down to where the character of the grass changed?

A. Well, you take the last trees on the ridge; that would be about 20 feet—generally about 20 feet—from the foot of the ridge the trees were.

Q. Yes.

A. And there was about from what I call the foot of the ridge to the water—there was about—it averaged about 70 feet; in
313 some places it was more and some places less.

Q. Now, when you say there were 30 and there--quarters acres of the ridge land?

A. Yes, sir.

Q. How far did you measure beyond the actual timber itself?

A. From 20 to 25 feet beyond the actual timber.

Q. From 20 to 25 feet from the absolute edge of the timber?

A. Yes, sir.

Q. Then, as I understand you, if you take that timber ridge and run a line from 20 to 25 feet outside of the absolute timber that would include 30 and one-quarter acres?

Q. Yes, sir; 30 and three-quarters.

Q. Did you in that survey notice the condition of 59th-street ditch while you were making that survey?

A. Yes, I did, about.

Q. Where is the ditch on 59th street?

A. Well, that is what I was going to tell you. About 350 feet

east of Stony Island avenue the ditch commences, and from there to the lake there is a ditch.

Q. There is?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Absolutely positive of it?

A. Yes, sir; I went over it; I ought to know.

314 Q. Now, let me see, so we won't misunderstand each other. You say that is on the south side of 59th street?

A. Yes, sir.

Q. That commences some 300 feet east of Stony Island avenue?

A. 350 feet.

Q. Well, 350.

A. Yes, sir.

Q. That from there there is an open ditch to the lake on the south side of 59th street?

A. Yes, sir. Well, the ditch at the lake is closed.

Q. Oh.

A. But it is open ditch to within 150 feet of the lake.

Q. Now, did you notice what was at the west end of the ditch?

A. The west end of the ditch the park commissioners have filled it up and made quite a road, macadamized it and made quite a road.

Q. Did you notice that?

A. No, sir.

Q. Did you notice any water in there, in that ditch?

A. Yes, sir.

Q. How much water was there there?

A. Same as there was at 63rd street.

Q. Well, about how much?

A. About two feet of water.

315 Q. You think there was two feet of water standing in that ditch?

A. Yes, sir.

Q. Was it running?

A. Not at all.

Q. Stood perfectly stagnant?

A. Perfectly stagnant.

Q. Now, was the top of that water as high as the ground south of it?

A. No, sir.

Q. Was the water in that ditch as high as any portion of this west 80?

A. Was what?

Q. Was the surface of the water in that ditch as high as any portion of this west 80-acre tract?

A. No, sir.

Q. How much below the lowest portion of that 80, in your judgment, stood the water in that ditch?

A. Well, that I could not tell you. I didn't test the water at 59th-street ditch.

Q. You didn't take the level of that?
A. No, sir; I did not.
Q. Well, give us your opinion on it, Mr. Wolcott?
A. Well, I should say that the water in the ditch at 59th street——
Q. The surface of the water?
A. The surface of the water in the ditch at 59th street was about six inches lower than the surface of the water on that 80.
316 Q. No, I am not asking you about the surface of the water on the 80, I am asking you about the lowest part of the 80 itself, the land?
A. Well, the land is about nine inches below the surface of the ground at 59th street.
Q. The land is what?
A. The water was about nine inches below the surface of the ground at 59th street.
Q. Well, that would make it about six inches lower than the lowest portion of this land, would it not?
A. Yes, sir.
Q. Now, Mr. Walcott, did you notice on the south side of that ditch along 59th street what was on the back right there? How was that ditch made, by throwing the dirt out on each side?
A. By throwing the dirth north.
Q. Throwing north?
A. Yes, sir.
Q. They didn't throw any of the dirt that was got from the ditch south?
A. No, sir.
Q. Are you sure of that?
A. Yes, sir; I am sure of that.
Q. So that the water that was standing upon this ground could have emptied right into the ditch?
A. Yes, sir.
317 Q. It had no bank to get over?
A. No bank to get over.
Q. Now, you are not mistaken; we don't misunderstand each other now. I am speaking of the ditch on the south side of 59th street.
A. Yes, sir.
Q. You say that that water, if there was water on this land, this 80 acres, immediately south of 59th street, that it would not have to get over any mound to empty into the 59th street ditch?
A. Why the ground rises as you go north from 63rd to 59th streets.
Q. Was there an abrupt bank there?
A. No, sir; there was no bank.
Q. The natural level of that ground came right down to the edge of the ditch and then the ditch sinks down?
A. Yes, sir.
Q. Mr. Wolcott, have you bought and sold any sand? Did you buy or sell any sand in 1870?
A. What do you say?
Q. Did you buy or sell any sand in 1870?

A. No, sir.

Q. Have you bought or sold any sand at any time during your existence for which you paid a dollar a cubic yard?

318 A. For filling?

Q. No, sir; for the sand itself?

A. I have for filling.

Q. You have bought sand at a dollar a cubic yard?

A. Yes, sir.

Q. That is, you paid for the sand from the place where you took it a dollar a cubic yard?

A. Yes, sir; not sand, but earth. It don't make any difference.

Q. I am talking now about sand.

A. Well.

Q. Did you ever pay for purposes of filling one dollar a yard for sand lying at the point where you took it?

A. I never paid it, but the men have that I have been engineering for.

Q. When?

A. At the time the city hospital was built up here; they paid over a dollar a yard, the contractors, did for that material.

Q. That was delivered there?

A. No, sir; they hauled it themselves.

Q. Where did they get it?

A. They got it from one mile to three mile haul.

Q. Do you know where they got it from?

A. No, sir; I do not. All I know is they hauled it from one to three mile-.

Q. That is what they told you?

A. What they told me.

319 Q. You don't know anything what they paid for it, only what they told you?

A. That is all.

Q. That it cost them a dollar a cubic yard.

A. Yes, sir.

Q. Or that it was costing them a dollar a cubic yard?

A. Yes, sir.

Q. Did you ever make any bill of such property as this?

A. No, sir.

Q. You say there was two foot of muck; where was there two foot of muck on the surface?

A. The muck, I should think, was about two feet deep.

Q. Where?

A. All through that slough.

Q. All through that slough?

A. Yes, sir.

Q. Then if you took a cane and pushed it down through, it will go down before it strikes the sand—will go down—two feet?

A. Yes, sir.

Q. That is correct, is it?

A. I think it would.

Q. Did you try it?

A. No; I did not.
Q. You are guessing at it?
A. No, sir; that is my judgment.
Q. Did you take the datum of Stony Island avenue?
320 A. No, sir; I did not.
Q. Then you are guessing at that, aren't you?
A. No, sir; I got that from the engineer of Hyde Park?
Q. You took what somebody told you about that?
A. Yes, sir.
Q. Who was that engineer?
A. Mr. McClellan.
Q. Did he tell you he knew?
A. What do you say?
Q. Does he know?
A. Yes, sir.
Q. How do you know that?
A. He is the engineer of Hyde Park; he has taken levels all over it.
Q. Oh; what did you ask him?
A. I asked him how the level of Stony Island avenue compared with the bench he gave me, and he told me that it was about a half a foot below it.
Q. Whereabouts did he give you the bench?
A. He gave me the bench on top of the hydrant, at the northwest corner of 63rd and Stony Island avenue.
Q. There was Stony Island avenue right there, was it not?
A. Yes, sir.
Q. It wouldn't have taken you very long to have ascertained it?
A. No, sir.
321 Q. Stony Island avenue at 63rd street—what kind of a place is that, built over?
A. Well, it was low ground when it was built over.
Q. It was low ground when it was built?
A. Yes, sir.
Q. Then you really, of your own knowledge, don't know what the average heighth of Stony Island avenue is?
A. No, sir; I did not take it.
Q. Did you ask him for its average?
A. No, sir; I asked him what it was.
Q. Do you know whether it is higher or lower at 59th street than it is at 63rd street?
A. No, sir; I do not.
Q. Now, I understood you to say, Mr. Wolcott, that this east piece, what there is left of it, is the same as it was in 1870?
A. Yes, sir; I should say it was precisely.
Q. Were you there in August, 1870?
A. Yes, sir; it was either 1869 or 1870; I think it was in the spring of 1870. It was when I made the survey for the park commissioners.
Q. Was 63rd-street ditch open at that time?
A. Not a one of them, sir; not one, any more than they are today.

Q. And wasn't it a fact the South Park Commissioners took
322 possession before you went there?

A. Well, I think not; I think it was at the time just after the act was passed.

Q. What act?

A. Giving them the park.

Q. When was that?

A. In 1869, I think.

Q. Then you think it was immediately after that that you were there.

A. Yes, it was after that.

Q. But you don't think it was as late as the spring of 1870, or as late as August, 1870?

A. It was either the fall of 1869 or the spring of 1870.

Q. And you found water in the ground then?

A. Yes, sir.

Q. Do you remember whether the ditches were open?

A. No, there wasn't a ditch open; you could walk right along anywhere on the lake shore.

Q. Anywhere along there?

A. Yes, sir.

Q. Was there any culve t under that bank along the lake?

A. No, sir; I think not.

Q. Was there a pier running out from 63rd street?

A. Yes, sir; there was.

323 Q. Wasn't there a box-drain sewer that went out into that pier at that time?

A. I don't remember of anything.

Q. Do you ever remember a box sewer out there, into that pier?

A. No, sir; I do not.

Q. Did you ever remember a drain under the said hills on the lake shore at that point?

A. I think there was. I think I have seen on the south side of 63rd street a drain.

Q. Now, didn't that run into that pier?

A. No, sir.

Q. Did not?

A. It did not; it went south of it.

Q. In 1870, when you were there, prior to August, 1870, when you were there, were there any trees along the lake shore?

A. Yes, sir.

Q. Are there any ther- now?

A. Well, there is, I think, four willow trees there now.

Q. That is right at 59th street?

A. That is right at the end of 63rd and the lake.

Q. Were there not some trees part way along? After leaving the clump of trees on 63rd street, wasn't there other trees along there?

A. There was about an acre.

324 Q. I say, skipping that clump there at the south end, wasn't there other trees along there?

A. No, sir; nothing but willow brush.

Q. Are you sure of that?
A. Yes, sir.
Q. Well, is there any willow brush there now?
A. Yes, sir.
Q. It isn't the same willow brush?
A. No, sir.
Q. Do you mean to say to this jury, Mr. Walcott, that the sand bank that is there now is as high as the sand bank that was there in 1870?
A. Yes, sir; I should say it was.
Q. That is your recollection?
A. Yes, sir.
Q. In 1870, do you remember whether the muck, the turf, rún out to the lake? Did that muck turf reach to the lake in 1870?
A. Yes, sir.
Q. It did?
A. Yes, sir.
Q. It did?
A. Yes, sir; it did.
Q. Reached under the sand hill?
A. Under the sand hill?
Q. And out to the lake?
A. Yes, sir.
Q. In 1870?
A. Yes, sir.
Q. It does to-day, doesn't it?
325 A. Yes, sir.
Q. And you think it did in 1870?
A. Yes, sir.
Q. Mr. Wolcott, did that shore increase or decrease from 1862 to 1870?
A. Decreased.
Q. It decreased?
A. Yes, sir.
Q. Then there was less land there in 1870 than there was in 1862?
A. Yes, sir.
Q. You are sure of that?
A. I am certain of that.
Q. Do you know whether there was accumulation of sand on that lake shore anywhere from from 1860 to 1870?
A. On this?
Q. Anywhere along that park front?
A. No, sir; I do not know that.
Q. It was a constant decrease from 1862 to 1870?
A. From 1856.
Q. Well, had it been continuing to decrease all the time?
A. Yes, sir.
Q. And never any increase?
A. No, sir.
Q. I understand you, Mr. Wolcott, to say that the result of putting out a pier running at right angles with the shore is that while it

accumulates ground upon its north it decreases and causes a
326 washout on the south?
A. Yes, sir.
Q. That is correct, is it?
A. Yes, sir.
Q. Do you know whether South Park put out, after they took possession of this property, just such a pier on the north line of this property?
A. Yes, sir.
Q. They did?
A. Yes, sir.
Q. What was the result of that pier?
A. It washed the ground.
Q. South of it?
A. Yes, sir.
Q. That, is this tract?
A. Yes, sir.
Q. They didn't put out any pier at 63rd street, did they?
A. No, sir.
Q. Now, you say also that it would be necessary to build a breakwater, in your opinion, to protect that property?
A. Yes, sir.
Q. Well, you say to run out your pier three or four hundred feet?
A. You would want to run it out at least a thousand feet.
Q. How far?
A. At least a thousand feet.
Q. Then run north?
A. No, sir; put in a breakwater; you start at the end of the pier that the South Park had established there.
327–8 Q. You might run that on out before you started?
A. Well that is there already.
Q. There isn't anything to hinder you from going further?
A. No, sir.
Q. Isn't there a sand-bar out there?
A. I couldn't tell; I didn't look.
Q. Don't you know from your old experience of Lake Michigan that just a little ways from the shore a sand-bar forms?
A. Yes, sir; generally three of them.
Q. Now, if you should put that pier out from where they have formed one, how many feet would you have to go to cover those sand-bars?
A. You would have to go 1,000 feet beyond.
[Q.] Then you would have to put out a breakwater to the south?
A. Yes, sir.
Q. To a pier that was 1,000 feet on the south?
A. Yes, sir.
Q. What would that result to the land lying in these piers?
A. In keeping it there just as it is.
Q. Wouldn't it fill up?
A. No, sir.
Q. Do you remember the breakwater they put in at 53d street?

A. I remember they put in a breakwater there.

329 Q. Just the character of the one you speak of?

A. Yes, sir.

Q. Do you know what the result of that was?

A. No, sir; I haven't been there to see.

Q. Do you know in a single instance along this lake shore where you put down the kind of pier you have named—that is, drive piles—put in two rows—that it does not fill up; do you know a single instance that it does not fill up the land enclosed?

A. Not a breakwater, a pier.

Q. I am speaking of a pile pier filled with stone.

A. Extending parallel with the shore?

Q. Yes; with other piers running out to it; now do you know of a single instance where it has not made land?

A. I don't know a single instance where it has.

Q. Where hasn't it?

A. The whole length of the lake shore from Randolph street down to 14th.

Q. There is that portion?

A. It hasn't made an inch inside of that; instead of that it has washed away.

Q. Is [it] the Illinois Central railroad track, that is what you are speaking of?

A. Yes, sir.

330 Q. Do you mean to tell this court and jury that that land there is less than when that track was made?

A. No, sir; because there has been millions of yards of material put in there.

Q. Did it not wash in from the lake?

A. No, sir; not a foot of it; not a yard of it.

Q. You are sure of it?

A. Yes, sir.

Q. Have you lately examined the foot of 51st street?

A. No, sir; I have not.

Q. You haven't been there?

A. Not since the breakwater was put in.

Q. You don't know what the result of that was?

A. No; I do not.

Q. Then this map which you have produced here does not attempt to show the ditches or the old road-beds that have been thrown up on that property?

A. No, sir.

Q. You are quite certain that you are not mistak*ing* about there being no clumps of trees over the line of this shore in 1870?

A. Yes, sir; I am, except at 63rd street.

Q. How high is Lake Michigan above city datum, or how high was it the day you were down there?

A. Two feet six tenths.

Q. Is it higher or lower to-day?

331 A. I could not tell you. I should think it is lower to-day; the wind is west.

Q. This was on the 26th of October?
A. Yes, sir.
Q. Mr. Wolcott, where the north line of 59th street from the lake west is, what—what is there now?
A. Of 59th street? Well, there is the park improved partially.
Q. There is a canal there, isn't there?
A. Yes, sir.
Q. The water in that canal is entirely open with the lake, is it not?
A. I think it is.
Q. Then the water in that canal would represent the level of the lake?
A. Yes, sir.
Q. Now, would this 59th-street ditch open into that canal when you wer- down there?
A. I didn't go clear to the lake. I went just 1,320 feet, and there I stopped.
Q. Well, wasn't there a bridge right there? You didn't put a rod over there, did you?
A. Yes, sir.
Q. Or pole with a piece of red flannel on it?
A. Yes, sir.
Q. Now, right where you set that pole didn't 59th-street ditch have a chance to get into that canal to empty into it?
332 A. I didn't take notice. I didn't go beyond it; not ten feet.
Q. Then, after you went to that point, you went south, did you?
A. I went south.
Q. And after you got through with this 80 you then went over to the lake shore, and did not come back to 59th street?
A. No, sir; I did not come back to 59th street at all.
Q. Then you were not at the shore at 59th street?
A. No, sir.
Q. Then how do you know the ditch was closed up there?
A. I suppose it was; just the same as all the rest of them were closed up in the same way.
Q. You are taking that on faith, then?
A. What, sir?
Q. You don't know anything about that?
A. No, sir; I do not.
Q. You are simply giving that as what you supposed they were?
A. Yes, sir; I know we had pretty tall boots, and we had to get a plank to get across the ditch.
Q. What ditch?
A. 59th street.
Q. Where did you cross it?
A. 1,320 east of the ground.
Q. How was the bottom of the ditch, mirey?
333 A. I could not tell you, we did not get into it.
Q. You did not get into it?
A. We sounded it and found it would be over our boots, and we didn't cross it.

Q. You didn't attempt to cross it towards Stony Island avenue?
A. Certainly not; there is no ditch there.
Q. Did you cross that ditch at all.
A. No, sir.
Q. Where did you go?
A. No, sir; we got a plank and crossed it in that way?
Q. Did you have to have a plank to cross that ditch?
A. Yes, sir.
Q. Sure?
A. Yes, sir; at 1,320.
Q. That is right at that point?
A. Yes, sir.
Q. I am speaking of did you have to have a plank west of that?
A. We didn't try.
Q. And you think there was two feet of water in it?
A. Yes, sir.
Q. Suppose you took the center line of this 80, Mr. Wolcott, running north and south; now, just in your mind, where the center line of that 80 would strike 59th street ditch, about, was there two feet of water in that ditch there?

334 A. No, sir; I should not think there is.
Q. How much was there?
A. Oh, about a foot, I should think.
Q. About a foot?
A. Yes, sir.
Q. Well, if that ditch were open into that canal, and the water stood a foot at that point in that 59th-street ditch, that would be a little higher than the water in Lake Michigan, would it not, if it were flowing that way?
A. No, sir; if it had passage into the canal it would be the same height; there wouldn't be a quarter of an inch difference.
Q. Notwithstanding it might be running?
A. No; it wasn't running.
Q. If it were standing still, so the water in Lake Michigan stopped it and backed it back and held it there; you are right; but supposing the water was running toward the lake. a pretty rapid stream running in there, and suppose the water in that ditch isn't over three inches, instead of a foot, and with a little narrow space not more than a foot wide, what should you say about it then?
A. I should say——
Q. That that water was higher than Lake Michigan?

335 Mr. GREEN: Wait; let him say it; don't you say it.

Q. Would that water be higher than Lake Michigan?
A. Yes, sir; in that case it would be higher than Lake Michigan.

Adjourned to 10 o'clock a. m., October 30, 1883.

336 TUESDAY, *October 30th*, A. D., 1883—10 o'clock a. m.

ALEXANDER WOLCOTT recalled.

Redirect examination by Mr. GREEN:

Q. Mr. Wolcott, in taking these levels that you have spoken of, who was it that held the rod?
A. A rodman of mine named Swanson.
Q. Are the figures marked on this rod?
A. Yes, sir; marked plain.
Q. Who called the figures off to you?
A. Part of the time the rodman and part of the time the leveler.
Q. Did you see the rod placed every time?
A. Yes, sir.
Q. Now, did I understand you to say that that rod was always placed on the ground?
A. Yes, sir.
Q. Was it every driven into the ground any?
A. No, sir.
Q. In placing it on the ground what sort of placing did you——

Mr. THOMPSON: I object to this, your honor.

The COURT: I think it is competent. It is redirect. You showed by the witness that he did not make all these measurements; that he got them from some one else.

Q. (Continues.) Did you put it on?

A. I put it on what was the average surface of the ground
337 at the point where he stood.

Q. Now, in recording these figures from which you have made your calculation here, did you record them as he gave them to you?
A. Yes, sir.
Q. I observe on this map that between these two ridges there is a ditch running north and south; there are no levels marked on this map east of the ditch; did you take any levels east of the ditch?
A. I took about 20 east of the ditch, and they were from one to four inches lower than they were on the west side.
Q. Inches—di! you say inches?
A. One to four inches.
Q. One to four inches lower?
A. Yes, sir.
Q. Then where did you make the lowest part of this swamp?
A. About 500 feet north of 63rd street and about 50 feet east of the ditch.
Q. Col. Thompson asked you in reference to the turf that was outside of the timber land, and you said that it was about 70 feet wide, as I remember?
A. Yes, sir.
Q. How much of that did you say you included in figuring the ridge?
A. I don't understand you.

Q. In figuring the high land here, which you say in these two tracts makes a little over 30 acres ridge, how much circumference did you take out of this turf?

A. About 20 feet.

338 Q. Outside of this 20 feet, then, there would be about 50 feet of turf before you got to the swamp?

A. Yes, sir.

Q. In that 50 feet of turf, how much higher was that, on the average, than the swamp land?

A. About from six to eight inches.

Q. Does the land, after you get inside of that turf, commence to rise abruptly, or does it still go on a very general incline?

A. A very gradual rise.

Q. Col. Thompson asked you about the making of the land on the north side of the pier on the lake shore?

A. Yes, sir.

Q. What experience have you had in observing the making of land on the north side of piers down on the south shore there?

A. In almost every instance the land makes on the north side of the piers where they are run out sufficiently to hold it.

Q. How far would it be necessary to run out a pier to hold the land?

A. About 400 feet.

Q. How much does it make, on an average, say in 10 years?

A. Well, it depends on the season. If we have some heavy north-east blows during the season it will make very rapidly; otherwise it will not.

Q. Well, take in the course of ten years, if you have observed it so long, what would be the permanent result on the shore of a pier 400 feet on the north side of this pier?

339 A. Well, it would make in a pier 400 feet—it would make—in about three years it would be within 50 feet of the end of the pier.

Q. Then what would be the effect on the shore; how far would it be felt north?

A. Well, about an angle of 36 degrees.

Q. What would be the effect on the next quarter of a mile north of that?

A. Scarcely any.

Q. JUROR: Did you say three years it would make that amount in?

A. About three years.

Q. Mr. DUNLEVY: It would make how much?

Mr. GREEN: So it would be an angle of 36 degrees to the pier?

Recross-examination by Mr. THOMPSON:

Q. I understood you just now, Mr. Wolcott, to say that from the ridge land there was turf for 70 feet; is that right?

A. Yes, sir.

Q. Wasn't that turf all the way across it?

A. Well, the turf below the slope of the ridge was a different turf entirely.

Q. But there was turf all the way across, was there not?
A. Yes, sir.
Q. Is it all the way across?
A. It is all the way across.
Q. Now, what do you mean by the word different kind of turf?
A. One was a specie of blue grass and the other was a slough like slough grass.
340 Q. Now, then, according to your best recollection 70 feet from the absolute timber edges you would leave this blue grass and strike slough grass?
A. No, sir.
Q. Well, how far?
A. From the absolute timber it would be about 100 feet. The timber is about 20 feet back.
Q. From the edge of the ridge?
A. From the ridge.
Q. Then 100 feet from the timber itself you run out of this grass you speak of into slough grass?
A. Yes, sir.
Q. What is that slough grass composed of?
A. Well, it is this heavy wire grass.
Q. Round, is it?
A. No, sir.
Q. What do you mean by wire grass?
A. I mean it is very tough, what is called slough grass.
Q. Is it perceptiable to the eye, the change?
A. Yes, sir.
Q. Is it perceptiable?
A. Yes, sir.
Q. I mean is it perceptiable so that a man who is not an expert would readily notice it?
A. Certainly.
Q. Do you know when the government breakwater was put in?
A. In 1834.
Q. Oh, no; you misunderstand me.
A. Oh, the government out here.
Q. Yes, running south—do you remember?
A. Yes, sir; but I don't remember the——
Q. You remember the fact, but you don't remember the year?
A. Yes, sir.
341 Q. It was since 1870, was it not?
A. Oh, yes; since 1873, I think.
Q. Was it in 1873 that it was started?
A. Well, I can't tell.
Q. But it was since 1870?
A. *Sir*, sir; since 1870.
Q. Is this slough grass that you speak of—is that used for hay?
A. I don't know, sir, whether it is or not.
Q. Do you know whether it has been cut off this tract?
A. It is all cut, on both sides of the ditch.

Q. Well, isn't it cut clear across the tract, except simply the ditch itself?

A. Yes, sir.

Q. Now, did you, in walking across there when this man set the pole down, were you right with him?

A. Yes; I was within five feet of him.

Q. And did he feel around to see whether he was getting on a tussock or in a hollow?

A. No, sir; he would look and see where he was setting his rod, and set it down.

Q. Why, I thought it was under water?

A. So it is.

Q. But you could see the bottom through the water?

A. Certainly, you could see the bottom.

Q. Did you think he tried to get an average height?

A. Yes, sir; I do.

342 WOLCOTT, a witness called in behalf of the defendants, being duly sworn, was examined by Mr. FULLER, and testified as follows:

Q. This is the map, Mr. Wolcott, that was attached to Mr. Waite's deposition made in 1876?

A. Yes, sir.

Q. Do you recollect the map?

A. Yes, sir.

Q. Who made the measurements?

A. I made the most of them.

Q. Can you state how much there was in the tract on the lake shore at that time?

A. 20 acres; I think there was $\frac{2}{100}$ over 20 acres.

Q. But these measurements on this map are the measurements that you took at that time, are they not?

A. Yes, sir.

Q. These measurements here have no connection with the measurements made in 1862, have they?

A. No, sir.

343 ALEXANDER WOLCOTT recalled.

Examined by Mr. GREEN:

Q. Mr. Walcott, have you made an estimate of the filling that would have been required in 1870 to have brought that shore piece of 34 acres up to the grade of Stony Island avenue?

A. Yes, sir.

Q. How much filling would it have required to have brought that up to grade in 1870?

A. 183,000.

Q. Thousand what?

A. 183,000 cubic yards.

Cross-examination by Mr. THOMPSON:

Q. How much did you figure on it was necessary to raise?
A. 34 acres.
Q. The whole 34?
A. Yes.
Q. Three and one-half foot higher?
A. Yes.
Mr. GREEN: Did you figure the whole on the lake shore of three and one-half feet?
A. Yes—no; that was taken out. I figured out what that was and deducted that out.
344 Q. How much did you figure would have to be filled three feet—how many acres?
A. 34 acres.
Q. Now, did you understand my question? How many acres did you calculate there would have to be a fill of three feet on?
A. 34 acres.

Redirect examination by Mr. GREEN:

Q. Was there a ridge on the lake shore there?
A. Yes, sir.
Q. Do you know what the level of that ridge was with reference to Stony Island?
A. It was nearly a foot and a half below Stony Island avenue.
Q. Now, did you calculate in this 183,000 cubic yards that you would have to fill that ridge three feet?
A. No, sir.; I deducted that out. I calculated the whole 34 acres at that filling, and then deducted out what was in the ridge.
Q. That is what I ask you. Then the 183,000—do you know how many acres of the 34 would have required a fill of three feet?
A. There is about half an acre in that ridge; about thirty-three and one-half acres.
Q. The rest was swamp?
A. Yes, sir.
Q. Now, they speak of a little grove down at the southeast
345 corner?

Mr. THOMPSON: He has told you how he has made his calculation. He excluded a half acre and calculated the fill upon the balance; that is right, isn't it?

A. Yes, sir. Hold on. There would be more than that; there would be about an acre and a half of that ridge.
Q. Does that include the little grove they speak of in the southeast corner?
A. Yes, sir.
Q. Now, did you, in calculating this 183,000 cubic yards, take and deduct the less fill that would be required for that sand-bar and grove?
A. Yes, sir.

Q. So in order to bring this up to grade you deduct that; and how much was the fill required—the average fill required—upon this sand-bar and this grove?

A. Yes, sir.

Q. How much was the average fill on that?

A. The average fill was about a foot and a half.

Q. How much would be the average fill on the marsh?

A. Three and one-half feet.

Q. Then the marsh was three and a half feet below the grade of Stony Island avenue?

A. Yes; that is what I calculated it.

Mr. THOMPSON: And how high was Stony Island avenue above the level of the lake?

A. I call it seven and a half.

346 ALEXANDER WOLCOTT recalled.

Examined by Mr. GREEN:

Q. Mr. Reporter, will you read to Mr. Wolcott the question that was last asked him by Col. Thompson?

"And how high was Stony Island avenue above the level of the lake? A. I call it seven and a half."

Q. Is that correct?

A. Yes, sir; that is, when a man speaks to me about the level of the lake I always call it city datum. The lake fluctuates all the time—every day.

Q. Then I understand you that Stony Island avenue is seven and a half feet above city datum?

A. Yes, sir.

Q. How high is the ordinary level of the lake above city datum?

A. Oh, it will average about a foot and a half.

Cross-examination by Mr. THOMPSON:

Q. Now, did they come out there in the hall and tell you that your testimony was wrong and to come in here and correct it?

A. What is that?

Mr. SHEPHERD: Yes; I did.

Q. Did they follow you out and tell you your testimony
347 was wrong and ask you to come in and correct it?

A. Yes, sir.

Q. Now, how high did you reckon the fill on that piece?

A. Three feet and a half above city datum.

Q. What? Seven feet and a half above city datum? That is three feet and a half above the level of the ground. Then how high would that be above the lake when the lake stood at its usual height?

A. It would be about two feet.

Q. When filled?

A. Yes, sir.

Q. Let us see; how high does the lake stand when it stands at its usual height?

A. Now?

Q. No; at its usual height.

A. It is about a foot and a half; it will average about a foot and a half above city datum.

Q. Now, you have calculated the fill of this to seven and one-half feet above city datum?

A. Yes, sir.

Q. Now, you take a foot and a half from seven and a half; how many does that leave?

A. It leaves six feet

Q. Then how many feet above the usual level of the lake did you fill, did you calculate to fill, that piece?

A. I didn't calculate at all.

Q. Well, how much does it result?

348 A. I cannot tell you that without calculation.

After the foregoing testimony was read court adjourned to 10 a. m. Dec. 6th.

349 DEC. 6TH, 1884.

J. F. FOSTER was then called as a witness on behalf of the defendant, and, having been duly sworn, was examined by Mr. GREEN, and testified as follows:

Q. What is your occupation?

A. Civil engineer.

Q. Where do you reside?

A. Englewood.

Q. How far is that from Hyde Park?

A. Abont two and a half miles west.

Q. Adjoining town?

A. Yes, sir.

Q. In whose employ are you?

A. That of the South Park Commissioners.

Q. How long have you been in their employ?

A. Eight years.

Q. In what capacity?

A. Engineer.

Q. Do you know a tract of land called Phillips' tract?

A. I do.

Q. Do you know the west 80 of that tract?

A. I do.

Q. How long have you know- it?

A. Ten or eleven years.

Q. Describe the location of that west 80 acres of that tract?

A. It is between 59th and 63rd streets, and east of Stony Island avenue.

Q. Stony Island avenue bounds it on the west?

A. Yes, sir.

Q. Have you ever made a survey of that west 80 acres?

A. I have.

Q. Have you ever taken any levels there?

A. I have.

Q. What is city datum?

350 A. It is the basis from which the elevation taken by the city authorities above a certain basis which is called city datum.

Q. Do you know what city datum was supposed to represent?

A. The city ordinances establishing city grades for the street say that the grades will be so many feet above city datum, which was low-water mark in 1847, as established by the canal commissioners.

Q. That is, it was the low-water mark of Lake Michigan in 1847?

A. Yes, sir.

Q. Established by the canal commissioners; what is the average height of Lake Michigan of late years as compared with its datum?

A. It is about two feet above.

Q. That is, the lake now usually stands two feet higher than it did in 1847?

A. Yes, sir.

Q. Higher than the low-water mark?

A. Yes, sir.

Q. What variation is there in the height of the lake during the last few years?

A. The greatest variation I have known is about five feet.

Q. Five feet above city datum?

A. No, sir; about four feet above city datum is the highest I have known it to go.

Q. How low does it ever go above city datum?

A. It goes below city datum at times—that is, when the wind blows from the southwest two or three days.

Q. You say the average is about two feet above city datum?

A. About two feet above city datum.

351 Q. You say you have surveyed this and taken levels there?

A. I have.

Q. Have you made a map, a topographical map, of the west 80 showing the levels of the land?

A. I have.

Q. What have you taken as the basis of your levels?

A. City datum.

Q. Is this map, which is now hung here the map which you made from this survey?

A. It is.

Q. I notice on that map some figures in red; what do they represent?

A. The elevation of the ground at the points at which the figures are placed above city datum.

Q. Will you point out on the map how you represent the high land and how you represent the low land in that west 80?

A. This represents the high land with these figures on it (indicating,) and this the low land; this is high land, or ridge land, you

might call it, and the balance of it is low land, with the small dots on it.

Q. On that west 80 acres how much is high land and how much is low land?

A. About 30 acres high land and 50 acres swamp land.

Q. I see adjoining Stony Island Ave. a place marked off called "Phillips' subdivision;" how much is contained in that subdivision fronting on Stony Island avenue.

A. 26 acres.

Q. Do you know that is *paid* off into acre lots?

352 A. I have seen an abstract with a plat of the subdivision in it.

Q. In that 26 acres, called Phillips' subdivision, how much is high land and how much is low land?

A. High land, $13\frac{1}{100}$ acres; swamp land, $12\frac{89}{100}$ acres; which is just about half and half.

Q. What is the elevation of Stony Island avenue at the corner of 63rd St.?

A. $7\frac{3}{10}$ feet above city datum.

Q. Is that what it has been substantially ever since you have known it?

A. Yes, sir.

Q. What is the height of the corner of Stony Island avenue and 59th St.?

A. Seven feet.

Q. What is the highest point in that land, in that west 80?

A. $9\frac{91}{100}$ feet.

Q. How high is that above the level of Stony Island avenue at 67th street?

A. $2\frac{6}{10}$ feet.

Q. Take the middle of the ridge, right there; how high is that above city datum?

A. $6\frac{7}{10}$ feet.

Q. Is that above or below the level of the street?

A. It is below the level of the street.

Q. Where is the lowest point in the swamp land between the two ridges?

A. It is a line about through there; about half way between the ridges.

Q. How much lower than the level of Stony Island avenue is the low ground at that point?

A. $3\frac{5}{10}$ feet.

Q. Below the level of the street?

A. Below the level of Stony Island avenue.

353 Q. Take the northern portion of that low land bordering upon 59th street; how much is that below the level of Stony Island avenue?

A. The lowest part of it?

Q. Yes; there is one point there that is 4 feet below. Go west to the next level you took; how much lower is that?

A. Three and three-tenths feet.

Q. Give us the next one west?
A. Three and one-tenths feet.
Q. How many levels did you take over that 80 acres?
A. 60 or 70 different observations.
Q. At different places?
A. At different places.
Q. You have given us the high and low land in the 26 acres of the subdivision; how much higher land is there in the east 54 acres of the 80?
A. $17\frac{83}{100}$ acres, and $36\frac{62}{100}$ acres swamp land.
Q. Take that low land along in the middle of it between the two ridges; how much higher is that than the ordinary level of Lake Michigan?
A. A foot and a half.
Q. Higher than the ordinary level of Lake Michigan?
A. Yes, sir.
Q. I see the middle, for instance, is about 4 feet above city datum; you have said that the average height of Lake Michigan is two feet above city datum; that would make that average two feet above city datum?
A. It would.
354 Q. When the lake is four feet above city datum how would the water stand in Lake Michigan with reference to the height of the land?
A. It would be as high as the land.
Q. Have you observed that land for the last ten years?
A. Yes, sir; to a greater or less extent.
Q. What is the condition of the swamp land as to being wet or dry?
A. It is generally swampy land.
Q. What do you mean by swampy land?
A. Springy, wet land. One who would walk across it ordinarily would get his feet wet.
Q. Does the water ever stand upon that swamp?
A. It does.
Q. To what extent?
A. Of course, it depends entirely as to the height of the water in the lake, or to a great extent upon that. There is water over it six or eight inches deep; sometimes deeper than that.
Q. Then, again, there will be no water?
A. A very many times there was no water. In dry seasons, of course, it becomes very much dryer than in wet seasons.
Q. In ordinary times, when the water is not standing on top of the ground, how long would you have to dig before you reached water?
A. In the swampy ground, do you mean?
Q. Yes.
A. Not to exceed a foot.
Q. What is the basis of all the drainage of that region; that is, where does that region drain to?
A. To the lake.

Q. Have you made a calculation of how much is required
355 to fill that swamp land in the west 80 to the level of Stony Island avenue?

A. I have.

Q. How much would it take?

A. 236,000 cubic yards.

Q. In making that calculation have you allowed anything to be taken off of the ridges?

A. I have not.

Q. How much could be taken off the top of the ridges there and still leave them on the level of Stony Island avenue?

A. Not to exceed eighteen or twenty thousand cubic yards.

Q. Why do you not allow that 20,000 yards in your filling?

A. There are trees all over there—not all over what is called the ridge land, but over a great extent of it, probably all that land which is above Stony Island avenue; and, in order to take the earth off, the trees would have their roots exposed and be destroyed.

Q. People do not like to destroy trees in that neighborhood?

A. Not in this pra-rie country.

Q. Do you know anything of the cost of filling?

A. Yes, sir.

Q. What has been your experience? Give your knowledge of the cost of filling low ground.

A. For the last five years I have been familiar with the cost of all filling which has been done by the park commissioners in the improvement of the park.

356 Q. You say it would take 236,000 cubic yards to fill that swamp land to the level of Stony Island avenue, to the level of the west 80-acre tract?

A. It would.

Q. Supposing that you could get that filling within a mile of that west 80 acres, and didn't have to pay anything for the filling, how much would it cost you for hauling and spreading?

A. About forty-five cents.

Q. Per cubic yard?

A. Yes, sir.

Q. So that it would cost substantially under these conditions $100,000 to fill that eighty?

A. Practically.

Q. In your opinion, would it be practicable to fill that part of the lake shore?

A. I hardly think it would.

Q. Why not?

A. Because there is very [little] land on the lake shore which is above the level of the lake; you mean, I suppose, immediately in front of this?

Q. Yes, sir.

A. Say off of the property fronting on this track?

Q. Supposing you owned this ridge here, why could [you] not take it from here and take it over there?

A. There is not sand enough there to fill it; that is above the

level of the swampy ground—you would get right into the water, and be unable to get much sand out.

Q. Suppose you could; how much would it cost to handle that and spread it?

A. If there was sand on the beach?

Q. And you owned the intervening land so you could get across it?

357 A. It probably could be drawn over there for 30 cts. perhaps a yard.

Q. What apparratus would you use to draw it over?

A. Tram cars and tracks; that would be the cheapest way.

Q. Do you suppose in this amount you have your plant already?

A. Yes, sir.

Q. The plant costs something?

A. Yes, sir.

Q. Do you know how much?

A. The tracks cost about thirty-five cts. a foot, and the cars in the neighborhood of $100 apiece.

Q. Why could you not go outside of the lake and dredge it out?

A. Into boats, and bring it in?

Q. Yes.

A. I suppose it could be done.

Q. Have you any idea how much it would cost a cubic yard?

A. The price which we paid for dredging?

Mr. THOMPSON: Never mind that.

A. Yes, sir; I have an idea.

Q. What is your idea?

A. I don't think that could be dredged there and brought in where it could be got at, I suppose you mean, for less than forty to forty-five cts. a yard.

Q. To make that low land available for residence purposes, would it have to be filled any?

A. I think it would.

Q. How high would it have to be filled?

358 A. I think it would have to be filled up to the height of Stony Island avenue, if not above?

Q. Why?

A. Because the ordinary way of building a house, as the people have around here, is to have a basement, and, in order to have that basement so that the second floor above is not higher than is desirable, it is customary to go two and a half or three feet into the ground. If this was brought up to the level of Stony Island Ave., which is seven feet above datum and five feet above the lake, you go down two and a half feet with your basement; that would leave you two and half feet above the ordinary level of Lake Michigan, and the water in the lake often rises as much as that, and, of course, you have to provide for pipes running into the lake. And when the water came up that high it would back into the basements and make *and make* them undesirable.

Q. Supposing you put only six inches of gravel on the swamp and build a house right on it, would your cellar floor ever get wet?

A. Certainly.

Q. Why?

A. Because it would be under the level of the water that sometimes rises there very often.

Q. You don't think it would make desirable residence property?

A. I do not.

Q. If the property was subdivided into small lots and built upon, what kind of drainage would be necessary then for health?

359 A. Sewers would have to be constructed of couse.

Q. Where do the sewers drain into in that region?

A. Lake Michigan.

Q. In order to sewer that property, how high would it have to be, taking Stony Island avenue as your basis?

A. Covering the sewers with a proper amount of dirt?

Q. Of course. Put the sewers as low as it is necessary and make proper drainage, sewers could be put there and covered with sufficient earth to preserve them, and the suface of the land perhaps be possibly a foot below the surface of Stony Island avenue.

A. That is simply for the drainage for that particular piece; they would not be large sewers; of course they would be small.

Q. When did you make this survey?

A. In the fall of 1883.

Q. That is, last year?

A. Last year.

Q. Did you at the same time make survey of the shore piece called 34-acre piece?

A. Yes, sir.

Q. At that time what was the dimensions of that?

Mr. THOMPSON: I object to that; that has nothing to do with this case.

Mr. GREEN: The object of the inquiry is to get at how much it would cost to fill the shore piece, supposing it was 34 acres and of the character that has been testified to here. Of course he, of his own knowledge, can only know what it was at the time of the sur-

360 vey. I propose to ask him what was the character of the land, and, supposing it was 34 acres of the same character, what it would cost to fill it.

Mr. THOMPSON: We have nothing to do with the dimensions at that time.

The COURT: I do not think any harm can come from the question.

Exception by the plaintiff.

A. 12.41 acres.

Q. Have you correctly described it on this map as it was then?

A. I have.

Mr. THOMPSON: I object to the map.

Mr. GREEN: We have not offered it yet.
The COURT: He is taking that as an illustration for the jury.

Q. Did you take any level on the shore piece?
A. I did.
Q. About how many?
A. I think there were six—five or six.
Q. What is the character of the shore piece?
A. Low swampy land.
Q. Is there any ridge about it?
A. A small sand ridge at the shore on the lake.
Q. You have heard a description of the shore piece as it was in 1870, have you not?
A. Yes, sir.
Q. What were the general levels of the swamp land in that shore piece?
A. The average level of the ground was about 3.6 above city datum.
Q. Then that would be how much below the level of Stony Island Ave.?
A. About 3.4 feet.

361 Q. How much would that be above the average of the level of Lake Michigan?
A. This land?
Q. Yes, sir.
A. 1.6 feet practically.
Q. How much would it be below the level of Lake Michigan when the water was high in Lake Michigan?
A. 2 feet or such a matter.
Q. You have observed that land, of course, in the last ten years?
A. I have.
Q. When you first observed it it was nearer in extent to what it was in 1870?
A. Yes, sir; there was more ground there.
Q. What is the general condition of that land as to wetness?
A. It is wet nearly all the time.
Q. Have you made a calculation on the basis of the description that has been given in evidence of the land in 1870—how much it would require to fill it to the level of Stony Island avenue?

Mr. THOMPSON: I would like to know what evidence he is giving it on.
Mr. GREEN: Mr. Wolcott's evidence.
Mr. THOMPSON: That is understood, is it?

Q. On what evidence was it you made the calculation?
A. I have made an estimate what it would require to fill that piece of land provided it was 34 acres in extent, and that the surface of the land was the same as is now shown, deducting therefrom the ridge line for half a mile in length—the ridge of sand; about as I found it at the time when I took these levels.

362 Mr. THOMPSON: To that I object, because the ridge of land is not at all as it was in 1870.

The COURT: You can show that; this may tend to show something; I cannot say it should be excluded on that ground. You may answer the question.

Exceptions by complainant.

A. I say I have made a calculation in that way, on that basis.

Q. How much ridge land did you allow?

A. A strip about seventy-five feet wide at the bottom and about two and a half feet high, and sloping up to nothing at the top.

Q. Is there a ridge down in the southeast corner now of this property?

A. This ridge is sand thrown up by the waves on the shore, and it extends all along the shore.

Q. Is there an elevation down in the southeast corner now, or was there when you made that survey, where there is a clump of trees?

A. No; it was not higher there than land along the shore.

Q. Figuring on that basis, how much would it have required to fill the 34 acres to the level of Stony Island Ave.?

A. 177,000 yards.

Q. That would bring it to what level?

A. To the level of Stony Island avenue.

Q. Did you deduct from that what was in the sand ridge?

A. That is the amount after the deducting has been made for this sand ridge.

363 Q. You have observed that sand ridge for how long?

A. Critically for about five years.

Q. In order to produce that amount of filling, have you calculated how high the sand ridge would have to be, supposing it was half a mile long and the same base as the present sand ridge?

A. Sloping up to, say, five feet on the top.

Q. Have you made a calculation, and give us the basis of your calculation?

A. Taking the base of 75 feet, and width on top 5 feet, and a half a mile long, it would require a bank 60 feet high to produce 177,000 cubic yards. No, that is not correct; that is, 60 feet high for 136,000 cubic yards; that was for filling the west eighty — I made the calculation.

Q. Have you made a calculation for this shore piece?

A. I have not.

Q. Suppose that in 1870 that the 34 acres piece consisted of 25 acres of low ground and 9 acres of ridge land; how much would that require to fill it to the level of Stony Island avenue?

A. I can make that calculation for you.

Q. You can make it afterwards. How long would it take you to?

A. About five minutes.

Mr. GREEN: We now offer this map in evidence that he has been testifying from.

The COURT: As part of his evidence?

Mr. GREEN: As part of the evidence of the witness.

364 Mr. THOMPSON: I object to the map as not showing the condition it was in in 1870. It simply shows the present condition.

The COURT: It can go in as part of his testimony.

(Map marked defendants' map A.)

(Here follows map marked p. 364.)

Q. You made that in October, 1883?

A. I did.

Q. I see some pencil marks on this map. Do you know what they represent?

A. They represent the location of lots 9, 10, and 15 of Phillips' subdivision.

Q. That is, if I understand, if you laid a map of Phillips' subdivision right over that topographical map, that is where those lots would come?

A. That is where they would come.

Q. I will ask you to look at this map. I hand you a map marked defendants' map B. State if you made it.

A. Yes, sir; I did.

Q. What do the pieces of colored paint on that map represent?

A. They represent the land in question in this case.

Q. What do the eighty acres colored yellow represent?

A. That represents the 80 acres which has heretofore been settled, as I understand. At any rate it is part of Phillips' tract.

Q. I notice in the north some pieces laid off by lines. What do these lines represent?

A. The outlines of property as it was purchased by the Park Commissioners.

365 Q. There are lines south of that that represent their purchases, or lands condemned by the Park Commissioners?

A. Yes, sir; some of the minor details are left out. They were divided into lots.

Mr. GREEN: We are through with this witness on everything except one subject, which is entirely different. We would like, when he has made some examination, to recall him on that subject.

Map marked deft's map B was introduced in evidence, and is as follows:

(Here follows map marked p. 365.)

Cross-examination by Mr. THOMPSON:

Q. Is this low land in the west eighty land that has turf all over it?

A. There is turf over it and grass growing.

Q. What makes turf, in your opinion?

A. Decayed vegetation.

Q. It has turf over it?

A. It has grass on it.

Q. And turf?

A. Turf.
Q. Do they cut hay on it?
A. Certain seasons hay is cut there.
Q. They don't cut it in winter, but during the time when hay is cut they cut it?
A. Not always; not usually.
Q. Was it cut last summer?
A. I think it was cut last fall; I am not positive as to that.
Q. Was it cut the year before that?
A. I cannot say.
Q. You don't know whether it is cut there yet or not?
A. I know it is not cut every year.
Q. Can you remember any year it was not cut?
A. I don't think it was cut this year.

366 Q. You say you have made a map of that. Have you shown the ditches there upon that piece of land?

A. I have not.
Q. Have you shown the road thrown upon it?
A. I have not.
Q. How long have you been an engineer for the South Park Commissioners?
A. About eight years.
Q. During that eight years has the drain on 63d street been opened into the lake?
A. It has been opened and kept open; it is open.
Q. Has it been kept open all the time?
A. It has been kept open every time they have a storm; and in consequence the mouth has been closed, and directly after the storm it has been opened.
Q. Do you remember when the park put out this pier at 59th St.?
A. I was not there when that was done.
Q. Do you remember the fact?
A. I remember there is a pier there, and the park built it.
Q. How long is that pier out there?
A. 700 feet.
Q. Right out into the lake?
A. Not that much into the lake; part of it is protecting the entrance into the inland lake.
Q. That is on the north line of this property in question, is it not?
A. Just north of it; immediately north of it.
Q. The south line of the pier is the north line of the property?
A. Not exactly, but within thirty or forty feet of it.

367 Q. Do you know what effect the putting out of that pier had on the shore of this land?

A. My impression is, as I observed, that it caused a scouring out of the land.
Q. Caused a washing away of the land?
A. I think so.
Q. What effect would that have on the north pier?

Q. Do you know where Grand Crossing is?
A. I do.
Q. Are there any inhabitants at Grand Crossing?
A. Yes, sir.
Q. About how many houses are there in Grand Crossing?
A. I have not an idea how many there are.
Q. A general idea.
A. Two or three hundred, perhaps.
371 Q. Do you know the height of the surface of this ground, right around where these houses are at Grand Crossing, above city datum?
A. I do not.
Q. You are an engineer, are you not?
A. I am.
Q. Did you ever take any levels down there?
A. I took some levels at one time, but that was in 1869, at the lake.
Q. Did you not take any levels at Grand Crossing?
A. I don't think the levels were run there run up to Grand Crossing.
Q. Did you not do some work for Hyde Park?
A. No, sir; not there.
Q. Do you know whether or not at Grand Crossing the surface of the ground where the houses are built is over four feet above city datum?
A. I am satisfied it is.
Q. How much?
A. That I could not say.
Q. About how much?
A. I should judge it must be six or seven feet above.
Q. Is that your opinion?
A. That is my opinion.
Q. Do you know of any houses built on property in the village of Hyde Park that is not over four feet — city datum?
A. I do not know that I do.
Q. Do you know Robertson's subdivision?
A. I believe that is south of 63rd street.
Q. Is that built over?
A. I think there are some houses there.
Q. Do you know what the character of the ground is where
372 those houses are built as compared with this?
A. Well, it is probably somewhat below Stony Island avenue, how much I don't know; whether it is or not I am not positive.
Q. You don't know about the topography of Hyde Park at all?
A. I have seen Hyde Park.
Q. Are there cellars under these houses?
A. I don't know — there are.
Q. Are there basements to any of these houses?
A. I can't say.
Q. Do you — of a house lying within a mile of this tract that has got a basement to it?

A. I think the houses that have lately been built down there, what are called Rosalie villas, have basements.

Q. Do you know it?

A. I am pretty well satisfied, but I have not examined them; they look as if they had.

Q. Did you take any levels where Rosalie villas are?

A. Along the south and where 59th street boulevard runs. I had levels across there.

Q. Is that boulevard a good deal higher than the villas?

A. Not higher than the street.

Q. Is it higher than the ground on which they build their houses; the street has been raised up?

A. The street is above the natural level of the ground.

Q. All these streets are, are they not?

A. The majority of them are.

373 Q. They are all above the ground on which the houses are built?

A. Certainly?

Q. Do you know how much these streets are above the level of the ground where houses are built?

A. I cannot say.

Q. It is some two or three feet in some places, is it not?

A. I should judge two feet at least.

Q. Is there a ditch on the north line of this property?

A. Yes, sir.

Q. Look at this map. I will ask you whether that correctly represents the ditches and roads on this property? (Showing witness topographical map attached to Geo. W. Waite's deposition, p. 275½.)

A. I have not examined the map as to that, but there are ditches and roads, &c.

Q. Look at it.

A. They are near the location of this road.

Mr. FULLER: He is referring to a map attached to Mr. Waite's deposition in the chancery case, which was made in 1876 to show the topography in 1862. (See map at page —.)

Q. I notice at a place you have taken a level in red figures 3.5. That is above city datum?

A. Yes, sir.

Q. Did you not take that in what is known as Phillips' slough?

A. I don't know what is known as Phillips' slough.

Q. You took it in a slough?

A. I took it in the place shown on the map.

Q. Is not that a fact that it is a slough?

A. Undoubtedly.

Q. And it was right in at that point that represents it on this map?

A. I don't know where that is; I am unable to judge from that.

374 Q. I will ask you, as an engineer, if you cannot tell by looking at this map whether the level you put on this map is not in the same place—just south of the central line of the 80?

A. I cannot say; I can say that the figure shown on that is not where this represents open water.
Q. Was it not as low a place as there was on there?
A. I don't think that it was.
Q. Whereabouts did you find any place that was lower?
A. I sent the rodman at the north and told him to take the average ground.
Q. Is that all you know about it?
A. That is all I know about it.
Q. That is what you told him to do?
A. And of course I relied upon him to do it.
Q. Did your rodman know the purpose for which you were making that survey?
A. I don't know that he did.
Q. You did*n't*, didn't you?
A. I was told to make the survey.
Q. Didn't you know you were making this survey for the purposes of this suit?
A. I supposed that was what it was for; I was instructed to make it by Mr. Fuller.
Q. Where is the lowest point on that east 34 acres?
A. I am unable to state just where the lowest point is?
Q. Were there any trees on it when you examined it?
A. No, sir.
Q. This ridge which you speak of that is on it to-day
375 is simply a little raised ground up to two feet in the center and dropping off?
A. That is it; it is a sand deposited by the waves along the shore.
Q. That is so the entire lenghth of it?
A. Yes, sir.
Q. There is no difference in the entire length?
A. No practical difference.
Q. Was that so in 1870?
A. I don't know.
Q. Do you know anything about it in 1870?
A. I do not.
Q. You say that the average above city datum of the lake-shore piece was three and a half feet?
A. About 3.6; that is, outside of the sand on the shore.
Q. Where did you find anything less than that?
A. As to elevation?
Q. Yes.
A. Upon this property?
Q. Yes.
A. There was one place, as I said before, on the 80.
Q. I am talking about the 34 acres.
A. I did not find any place lower than that.
Q. Then it was all the same height?
A. Practically level.
Q. No portion of it higher than another?
A. Except as to the ridge along the shore.

Q. I am speaking of that not on the ridge?
A. It was practically level as far as I was able to judge.
Q. You say the lake sometimes rises—how high?
A. I have known it to go four feet above datum.
Q. Then, when you say the lake is four feet above datum, how much under the height of the lake did you say this low portion of of the 34 acres would be?
A. Somewhere in the neighborhood of a foot and a half or
376 two feet; it would be less than two feet.
Q. If the lowest portion is three and a half, and you deduct three and a half from four feet, it would leave——
A. About six inches.
Q. Then it was not from two to two and a half feet?
A. Not according to that.
Q. Did you see the water back from the lake on this eighty?
A. I have seen the water roll from the shore and go over it.
Q. Over the 80 acres?
A. On the 80.
Q. Ever see the water flow from the lake onto any portion of the 80?
A. I do not know that I have.
Q. When was it you saw Lake Michigan as high as you state?
A. There was a time this summer—the date I cannot remember—there was what we term a tidal wave came in, and the water rose up very high indeed.
Q. How long did that last?
A. It did not last not to exceed half an hour.
Q. It was a very unusual phenom-on, was it not?
A. During the past two years those occurrences have been quite frequent.
Q. How frequent?
A. During 1882 three or four times it occurred.
Q. When it first occurred did it not attract a good deal of attention among people who observed it?
A. There was more or less talk about it.
Q. Did you ever know that to occur prior to two years ago?
A. I did not.
377 Q. I understand you that residence sewers are necessary?
A. I think so.
Q. That is your judgment?
A. It is.
Q. Are there many residences in Hyde Park south of 56th street?
A. There are residences.
Q. 56th street is the north line of that tract?
A. Yes, sir.
Q. Is there any sewer south of 56th street that you know of?
Mr. FULLER: Do you mean now?
Q. Yes, sir; now, to-day.
A. There is a box sewer at 63d street; I don't know of any other.
Q. How many inhabitants are there at South Chicago, where the North Chicago Rolling Mills are situated?

A. I only know by hearsay.
Q. What is your best judgment?
A. I presume about eight or nine thousand.
Q. Do they have sewers?
A. I don't know.
Q. Do you know whether the land is higher or lower than this land?
A. I don't know that.

Redirect examination by Mr. GREEN:

Q. Do you know the land where the rolling mill employes live?
A. I only know generally.
Q. Don't you know the land between South Chicago Ave. and the rolling mills, where all these houses are out there?
A. I have seen them.
Q. Do you consider that desirable residence property?
378 A. I should not consider it so for myself.
Q. Under water most of time, is it not?
A. That I don't know.
Q. I understand you to say you know the effect of running a pier out on the lake shore?
A. I think I do.
Q. Taking half a mile frontage, and supposing that frontage is a straight line, and you run a pier out to the southern boundary three or four hundred feet, what is the effect of the action of Lake Michigan on the half-mile front?
A. The water will scour the land out from above the pier and make perhaps a small deposit of land right at the pier at the *back* end; it does so sometimes and in some places, and in other places it does not make any deposit there at all.
Q. When it does make a deposit and accretion, what becomes of the straight line of shore?
A. The shore line on the north pier always forms in the shape of a crescent.
Q. Where does the sand come from that forms the secretion?
A. Usually immediately north.
[On the margin:] It was agreed for the purposes of this case that the land in controversy consisted of one hundred & eleven (111) acres, to wit: 34 acres, 54 acres, & 23 acres, as explained by witnesses & maps.

CHARLES FITZSIMMONS was then called as a witness on behalf of defendants, and, having been fully sworn, examined by Mr. Fuller, testified as follows:

Q. What is your present occupation?
A. Contractor of public works—dredging, docking, and bridge building.
Q. How long have you been engaged in that business?
A. Eighteen years—in Chicago.
Q. In what business were you engaged before that?
379 A. Just previous to that time I was in the army.

Q. How long?
A. Five years.
Q. Did you commence that business in Chicago in '66?
A. In '67.
Q. Have you had any experience on the lake shore; and, if so, what?
A. I have had considerable experience on the lake shore—in building piers and breakwaters and aiding in the construction [of] harbors and actively engaged every year since I have been here.
Q. Since '67?
A. Yes, sir; and during '67.
Q. For what purpose were these piers and breakwaters erected?
A. The first I was engaged in was for harbor purposes for the Government; it was the extension of the north pier.
Q. That was in what year?
A. '67 and '68.
Q. That was an extension of the north pier?
A. Yes, sir.
Q. The others, were they for the purpose of protecting the lake shore, any of them?
A. The Chicago breakwater was built by the Government; I built 1,100 feet of it; it was for the protection of the harbor. The work I constructed for the Lincoln Park commissioners was for the purpose of protecting the shore.
Q. Where is Lincoln Park?
A. It is just north of the water works.
Q. On the north side?
A. Yes, sir.
Q. When were you employed in the breakwater there?
A. 1874.
Q. Where was it?
A. Parallel breakwater.
380 A. Parallel with the shore line.
Q. When were you employed when you built the 1,100 feet for the Government?
A. In '73.
Q. That was a parallel breakwater?
A. Parallel to the shore, but distant from it east of the shore line.
Q. When were you employed on the pier on the north side in '67? What kind of a pier was that?
A. That was what might be called a continuation of the north pier; that is, it resulted in carrying the outer end of the pier some 450 feet further east than it was previous to '67.
Q. Now, this work on the Government pier in 1873, was that a continuation of previous work?
A. Yes, sir.
Q. How long has the Government been erecting a pier there on the south side of the river?
A. I think the first work on that pier was performed in '69.
Q. Prior to 1870?
A. Yes, sir; that is my recollection that it was in '69.

Q. What other piers and breakwaters have you been engaged in erecting?

A. I have built piers for the South Park Commissioners.

Q. Where?

A. One at 57th and one at 59th streets.

Q. What other piers and breakwaters have you made, and for what persons or corporations?

A. For the Ill's Central railroad. I have done a great deal of filling up and building new docks.

Q. Have you observed the other work of the Illinois Central other than what you have been personally engaged in upon the
381 lake shore?

A. I have observed their labors in protecting the shore from Chicago to Hyde Park ever since I have been here.

Q. Can you state from your experience what the prevailing winds are on Lake Michigan?

A. Our heaviest winds that create the greatest wave motion are from the northeast.

Q. In what way do these winds operate or the currents of the lake operate in the way of secretions, if any, or of erosions?

A. At times where the shore is not protected the operations of the waves is to cut out and erode the shore, and carry it to the southern or carry the e-cretions to the southern.

Q. Has there been during your experience any increase of the shore of the lake; and, if so, where?

A. That is a comprehensive question. At points there has been an increase; that is, the shore line has been pushed out by operation of the water.

Q. Is there any difference between the north and south, the north shore of the lake and the south shore, in reference to increase by excretion; and, if so, what?

A. My opinion is that the -ecretions are greater to the northward, because the source of all the sand and shingle that is moved on shore is to the northward from the high bluffs eroded by the ice, and brought down in the shape of pebbles, sand, and boulders.

Q. These substances you have mentioned pass to the south?

382 A. The lighter portions always—that is, held in suspension by the waves.

Q. That is the very lightest, is it not?

A. Yes, sir.

Q. Why is that; why does the lighter come south?

A. By the law of gravity that the heavier material requires more wave action to carry it; it will deposit sooner and more readily than lighter material.

Q. Any other reason?

A. In this special locality the jutting out of our harbor prevents the heavy material passing.

Q. How is it with the north pier; what effect does that have?

A. The effect of — north pier is to prevent the heavy material —; that is, the material moves and is rolled over by the action of the waves; where any great quantity is in motion it is that way. It moves on

its own surface held in suspension by the waves. Of course, it passes with the waves until it finds still water or lodges.

Q. In what way does the water strike the shore below 35th street?

A. It strikes it more nearly direct below 35th street; the land makes to the eastward, and the prevaling seas strike it more nearly at right angles than it does to the northward.

Q. What action of the waves is it that carries the shore away?

383 A. My observation is that it is the undertow, the flowing back after the waves, are piled up on the low line of shore, the receeding action carries along the sand.

Q. Is the intensity of that action more likely to be greater in proportion to the perpendicularity in the stroke of the wave in the first instance?

A. Yes, sir; the more nearly perpendicular the waves strike the greater the erosive action.

Q. Has your experience given you any intimation as to the character of the bottom of the lake?

A. Yes, sir.

Q. What is its character near the shore?

A. It is usually clay within 1,200 feet, or thereabouts, to the shore. The slope of sand, gravel, &c., begins running from nothing—say, out 1,200 feet to perhaps 1,400 feet at low-water line.

Q. So 1,200 feet out it loses its sandy bottom?

A. Yes, sir; my observation is that it is clay or boulder 1,200 feet out.

Q. You know the tract called Phillips', south of the improved portion of East Park?

A. Yes, sir; I am somewhat familiar with it.

Q. You are familiar with the character of the land south of 59th street?

A. Yes, sir; to 63rd.

Q. What was the effect on the shore north of the 59th-street pier for two or three years after it was built?

Mr. THOMPSON: When was it built?

A. I think it was in '74.

384 Q. What was the effect on the shore north of the pier for two or three years after it was built?

A. It appears to increase at the junction of the pier with the shore line. A triangular piece of land formed there.

Q. At the base of the pier?

A. At the base of the pier.

Q. What was the effect on the shore further north?

A. There was, or appeared to be, a crescent shape or circular, which seemed to be eroded from a straight line.

Q. It was scooped out?

A. Yes, sir; that expresses it.

Q. Do you mean what may have been gained at the foot of the pier was lost at the other part?

A. I think very nearly all gained.

Q. Then if you took a perpendicular line north and south the area at the time the pier was built would be about the same?

A. Yes, sir; would not increase very much.

Q. Take the shore from 59th to 63d street-, a strip half a mile, and suppose a pier was built from 63d street 400 or 500 feet into the lake, what would the effect be on the north side of the pier?

A. It would appear to make land on the north side of the pier, immediately along the pier.

Q. North of it would there be a corresponding decretion of the shore line?

A. Yes, sir; I think the effect of the pier would be to throw the current at some point on the shore north of it; that would erode it in the curve.

385 Q. What would be the permanent effect on the whole half-mile frontage, supposing a pier such as I have assumed at 63d street, on the area?

A. You mean the effect of the 63d street-pier?

Q. Yes, on the whole frontage of half a mile—that is, what difference would be made in the area by the change of shape; would the area remain the same?

A. About the same in that situation. I don't think it would gain; it would change the shore.

Q. But it would not gain?

A. No, sir.

Q. In order to protect the shore line of a half a mile in extent; protect it as shore and hold it in possession, what would be necessary to be done?

A. It would be necessary to build a protection sufficiently strong to resist the action of the waves and prevent the sand from washing through it.

Q. What kind of protection would that be?

A. It might be protected in several ways. The most common way is to drive piles and fill in between them—drive two rows of piles.

Q. You mean a breakwater?

A. Yes, sir.

Q. A parallel breakwater?

A. A parallel breakwater.

Q. Two close rows of piles—that is, in an exposed situation, such as the Illinois Central, such places are protected in that manner. The breakwaters built by the Illinois Central—all the way, I think, from 16th street to Hyde Park—have two parallel rows of

386 piles driven closely together and filled in between with stone, and tied across with iron rod-.

Q. How far apart are the two rows?

A. About eight feet apart.

Q. Filled with what?

A. Stone.

Q. How much did that cost?

A. About $20 a lineal foot.

Q. How much would that have cost in 1870?

A. No material difference in the cost of that work; about the same.

Q. You are speaking now of breakwater running parallel with the shore?

A. Yes, sir.

Q. Would it need a pier at each end?

A. It would need something. It would have to be connected with the shore.

Q. How far out would such a breakwater necessarily have to be constructed?

A. Right along the shore.

Q. You said the ends would have to be joined with the shore; what would the distance of high-water mark be?

A. The ends would have to be connected with a point on shore as high as high-water mark, or the waves would get around the breakwater and undermine it.

Q. That is the reason?

A. Yes, sir.

Q. How much would such a pier cost—that is, to run out and connect with the breakwater?

A. $12 to $15 a lineal foot.

Q. How long would that have to be at 59th street, as you remember the lay of the property? Give a general idea.

A. About 150 feet.

387 Q. Have you had any experience in dredging on the lake shore?

A. Yes, sir.

Q. To what extent?

A. A great many thousand yards.

Q. For how many years?

A. For the past ten years.

Q. Take the west 80 of that tract, which lies between 59th and 63rd streets and Stony Island avenue on the west, and assuming that to bring it to the grade of Stony Island avenue would require a fill of 220,000 cubic yards, what, in your opinion, would be the cost of that in 1870?

A. And to obtain it from the lake?

Q. What other way would there be?

A. I don't know of any other way.

Q. Then take it from the lake?

A. About seventy cents per yard for the west 80.

Q. That is $150,000 in round numbers.

A. I can figure it at $154,000.

Q. Suppose the shore piece required 175,000 cubic yards to fill it, what would that cost, the filling of it?

A. How distant is any portion of it? Is it that pink piece on the map?

Q. Yes, sir; it is all on the lake shore.

A. In the neighborhood of 50 cents per yard.

Q. How much would that make for the whole 34 acres?

A. An average of 50 cents.

Q. 175,000 cubic yards, I assume?

A. $87,500.

388 Q. About how much could that contract have been let for in 1870 to do that filling?

Mr. THOMPSON: That was the question before, what it would cost in 1870.

Q. You were dredging then?

A. Dredging on the canal, not on the lake then I think the cost — I am speaking now of a price that would warrant a contractor in doing the work, pay a proper interest on his plans, and pay for superintendent, labor, and work.

Mr. THOMPSON: The prices you have given were contract prices?

A. Yes, sir.

Mr. FULLER: In 1870?

A. Yes, sir.

Q. Where would you get the sand and filling on the lake shore? You assume in your statement that the breakwater is built, and you get this sand by dredging. If there was a breakwater, it might be got by dredging in front of the property, some distance from the breakwater. It would not be a good policy to dredge immediately along the breakwater. Why couldn't you dig holes on the lake shore, even if you didn't have a breakwater?

A. You dig it along the lake shore without a breakwater, and you will simply rob Peter to pay Paul. You take sand in one place and put it in another. Your shore line would recede. There would be so much of your land gone.

Q. ——.

A. Yes, sir.

389 Q. What is the consistency of the sand on the lake shore when you dig down six inches?

A. It has the usual consistency of sand brought there by the action of the waves. It is what you would call quicksand. It is very hard when saturated with water.

Q. When submerged and packed could it be dug by hand?

A. Not profitably; it is very hard.

Q. How hard did you say—like sandstone?

A. Soft sandstone. You take and dig down to a level spot of it and strike it with a crowbar, and it will ring under the action of the crowbar, and emit a sound as if striking on a rock.

Q. You couldn't dig it out by hand?

A. Not profitably.

Q. What are jetties?

A. I understand the professional term is short pier, starting from the shore line and protruding in a water-course, either a river or lake.

Q. Are they practicable, or were they in '70 on the shore?

A. The practical effect of these jetties, according to my observation, is to deepen the water immediately in front of their outer end. That was the purpose for which they are used on the Mississippi, and that is the legitimate use and province of jetties, to deepen water

in front of their outer end. On the shore, jetties erected there would have that effect.

390 Q. You know whether the Illinois Central tried these jetty piers?

A. Yes, sir; between here and Hyde Park. They had somewhere from 50 to 100 of these jetties. They were built, I think, commencing along in '67. I saw them at work, and they continued to build these jetties up to '73 or '4.

Q. How did they work as a protection?

A. The fact they have built a parallel pier outside of them since then shows that they did not serve the purpose of protecting the shore line.

Q. Would you say that jetties running out a few feet from the shore would ever produce *e*-cretions there to any considerable extent in 1870?

A. No, sir; not in themselves they could not. They could not in themselves produce *e*-cretions; there might be other causes.

Q. What other causes?

A. If they were shielded to the northward to mast the property that might produce *e*-cretions.

Q. From your experience on lake shore how was the fact in 1870, and prior thereto, as to their being erosions of the south shore as well as accretions?

A. The first I noticed the south shore was in '73.

Q. So you don't know about that?

A. Previous to that I don't know.

The COURT: Do you know of any causes that would produce erosions in '73?

391 A. The Government was constantly being pushed out since '67. The effect of that in a small messure was perhaps to do it.

Q. I will ask you that: How has it been since 1873 as to *e*-cretions and erosion on the south shore of the lake?

Objected to.

A. The south shore seemed to be continually eroded since '73.

Q. What effect upon the south shore in that regard did the Government pier have?

A. It is my opinion it had the effect of throwing the current on that shore, a current of water which tended to erode; which would vary wherever that current struck a point according to the direction of the wind and according to the height of the lake; so that one time it would cut out in one place and deposit in another, and the next storm perhaps would cut out where it had deposited in the previous storm.

Q. To what extent do you think the pier had this influence, in your judgment as an expert.

A. It is a pretty hard question to solve. It is an unknown quantity.

Q. Is it large or small; slight or great?

A. It cut off the bringing of erections from the northern; that is,

the waters that strike this pier have very little sand and material in suspension.

Q. You refer to the extension of the Government pier in '73, do you not?

A. Yes, sir.

392 Q. The same influence would attach to what there was of the pier before 1873?

A. To the extent it went eastward the projection of the pier into deeper water cuts off the passage of heavy *e*-cretions.

Q. That was true of the north pier?

A. Yes, sir.

Q. It has been true all the years you have been here, has it not?

A. Yes, sir; the extension of the pier to the eastward has that effect, as well as throwing the current at some point below.

Q. Do you recollect when the Illinois Central first commenced protecting their shore?

A. I think it — '67; I am not positive; I think it was in '67 I first observed them.

Mr. FULLER: I would like to say there is another question we would like to ask this witness after he has made an examination.

Mr. THOMPSON: I would like to know what this question to these experts that is held back is.

Mr. FULLER: There is no reservation of any question.

Mr. THOMPSON: I shall object, then.

The COURT: That will come up when the examination is continued.

Mr. THOMPSON: I wish to make an objection to it, so that they will know it now.

Cross-examination by Mr. THOMPSON:

Q. I wish you would state what change there was made in the Government pier in 1873—the breakwater.

A. There was 1,100 feet built, continuing it to the southward.

Q. That is, parallel with the shore, or nearly so, extending south some 1,100 feet.

393 Q. More than it had extended previously? That extended down south of 16th street or just about 16th St.?

A. No; I think the south end does not extend farther than Van Buren St.

Q. What pier is that that goes from the Government pier up to the Illinois Central works?

A. There is a pier diagonally from the end of the south breakwater. There is a diagonal pier which leaves an opening at the south end of the breakwater and goes in the direction of the shore line.

Q. Was that built about the same time or shortly after?

A. That was built in 1876.

Q. Did you build a pier in front of a little park at Hyde Park north of the hotel?

A. Yes, sir.

Q. Do you remember when you built that?
A. I think it was in the year 1872; it was either in 1872 or '3.
Q. Was it not after the Government pier was built?
A. Yes; it was after, in 1874.
Q. That was built on the model you have described with two rows of piles and stones put in between?
A. One close row in front and two rows of piles in the rear five feet apart.
Q. How far was that from the shore line; about — it commenced on the shore line near the south end, and about how far was it from it on the north end?
394 A. It was immediately at the shore line at the south end. On the north end at low water it was, perhaps, 500 feet from the shore.
Q. Have you noticed what accretions have taken place there; what has been the result of building that pier?
A. It has filled up and restored the land that was cut away in a great measure.
Q. In making these piers you have spoken of the kind you have spoken of. Supposing a pier was run out on the south line of the property in question, at 63d street—supposing you run a pier out here a hundred feet, and then run a pier directly north, what would have been the result?
A. The south end would fill up if the pier was tight.
Q. That is, in here it would fill up on its own accord?
A. Yes, sir.
Q. Have you built any piers or done any work for the South Park where you have put down piers and then dredged the clay and sand over it to fill it up?
A. We filled up at 59th St.—dredged over the pier there.
Q. You constructed a line along the shore—a single line?
A. A double line.
Q. And then put your dredges here, and dredged right over it with one sweep of the dredge?
A. Yes, sir.
Q. What took place in the hole you dug outside?
A. After a long period it filled up, or practically so.
Q. Whenever you dug a hole or dredged on the shore a
395 few feet from the shore, what is the result?
A. After we have a northeast storm it fills up.
Q. I understand you that from the shore line the sand gradually runs out to clay, striking the clay at 1,200 feet?
A. About that; it varies in places according to the nature of the banks.
Q. I mean down here, off this shore?
A. Perhaps it is more than 1,200 feet there.
Q. That commences at the water line there. There is no bank, is there?
A. At what place?
Q. In front of this property there is no abrupt bank?
A. It is sloping.

Q. It continues that slope out for over 1,200 feet?

A. It is not regular; it is formed by three bars.

Q. What is the depth of the water? How far has a man to go from the shore right out at right angles with the lake shore to get over his head?

A. A good ways, in places

Q. About how far?

A. 200 feet, or thereabouts.

Q. There was nothing impracticable in building a pier, such as I have described, there in 1870?

A. On 63d St.?

Q. From 63d street north?

A. No, sir; it could be done.

Q. Placing dredges there to put that sand and clay over from time to time with the sweep the arm of the dredge would naturally have. That could have been filled if it was enclosed with a
396 pier on the north, could it not? I do not mean at once, but waiting for storms to refill it, and then dredge again.

A. Yes, sir; if there was a breakwater that would hold it.

Q. It would fill of itself?

A. Yes, sir.

Q. The same effect that happened at Hyde Park at the hotel?

A. Very much the same, except this was nearer to the source of accretion.

Q. Do you remember James Morgan's pier?

A. Yes, sir.

Q. Was not that in a very unfavorable position for filling with the end of the pier running out north of it?

A. I do not consider it unsafe.

Q. Would it have been more or less likely to fill than a pier put here at 63d street?

A. I think it would fill more rapidly, more su ely, by Mr. Morgan's pier masking the entrance; that is, it made the water stiller, and sand in suspension deposits more readily in still water.

Q. A pier running out here would have the same effect?

A. Leaving an opening to the south.

Q. Did you do the dredging that was done immediately south of the 59th-St. pier?

A. I dredged there.

Q. You know what was done there?

A. Yes, sir.

Q. There is a large canal cut right south of 59-St. pier?

A. Yes, sir; and a lake inside.

Q. And dredged in along 59th street?

397 A. Yes, sir.

Q. You spoke about these jetty-s running out with the effect to deepen the water in front of them; if these jett-s were put out a few feet apart, or not very far apart, it would hold the sand, would it not, there?

A. No, sir; you would not gain any sand with short jetty-s.

Q. You would not gain beyond the end of the jetty and opposite the end of the jetty, but you would gain some?

A. It would be an absolute loss with the construction of jetty-s on a low line of shore.

Q. You don't believe in the construction of jetty-s?

A. No, sir; except for the purpose of deepening in front.

Mr. FULLER: It is an absolutely loss eventually?

A. Yes, sir.

Q. Do you know anywhere along the lake shore where the putting out of jetty-s as the apposite effect of which you speak?

A. I do not know of any place where it has had opposite effect finally.

Q. Up to the present time has it had the effect of making ground?

A. The jetty-s I have in mind, and they were the most numerous and strictly speaking jetty-s, built by the Illinois Central. They have had the effect of deeping the shore line.

Q. Have you observed any jetty-s north?

A. Yes, sir; at Lincoln Park they put out a series of jetty-s at one time; in 1870, I think.

398 Q. Did that deepen the water?

A. It had that effect—the water got inside of their ends.

Q. That was because the shore end was not protected?

A. Partly.

Q. Do you know of any jetty-s along this lake shore, the present condition of which is they had gained in the neighborhood of 100 feet; do you know of any such condition?

A. When I speak of these I mean a short pier: if it was a long pier that extends out quite a distance into the lake, I have said in my testimony the effect will be to apparently gain at the base of that a more or less gain of land.

The COURT: The question is do you know of a case where there has been a gain of 100 feet by the construction of jetty-s on this shore?

A. A I understand the term jetty, it means a short——

Q. I mean a long pier; it must be over 100 feet to gain 100 feet?

A. A long pier would cause a gain immediately at the base of the pier. I know of the north pier.

SATURDAY, *December 6th*, 1884.

Court met pursuant to adjournment at 2 p. m. (FITZIMMONS on the stand).

Mr. THOMPSON:

Q. What effect upon the land immediately south of 59th
399 street did the running out of the pier by the South Park Commissioners just north of 59th street, and the cutting of the canal just south of it have upon the shore south running clear out here (indicating), and cutting the canal in here? (Indicating.)

A. From the points of the pier the water would strike a point about as long distant from the pier (indicating); about down there. It would strike that with increased force, and, of course, form a crescent shape.

Q. Did it wash it away?

A. Not to any great extent, but it changed the line, making it curve along inside of that one. (Indicating.)

Q. It took it away from here south?

A. Not from immediately under the pier.

Q. Immediately under the pier is a canal?

A. It is dug away partly.

Q. What effect did the building of the pier and the cutting of the canal have with reference to the ground south?

A. It would have the effect of changing the shore line.

Q. Does it take any of it away?

A. It took it away where the water was deepened immediately for the canal.

Q. This line on this map (indicating); one map is this line here on this map? (Indicating another map.)

A. From the end of this pier (indicating map); the water
400 rushing down here (indicating), and washing against the shore would strike the shore equal to the length of that pier distant from it, and make an erosure there, carrying the material further south.

Q. Are you familiar with the work that has been done by the Lincoln Park Commissioners?

A. Yes, sir.

Q. How much land have they accumulated on their shore altogether?

A. Down on one point, where North Ave. was to be carried out, is a pier carried out south 1,000 feet from the original shore line; there has been an accumulation of land.

Q. That was the north line?

A. At one time it was; yes, sir; in 1867.

Q. Now how much land have they accumulated?

A. Well, the carrying out of that pier——

Mr. SWETT. Oh, how much have they accumulated altogether?

A. 15 or 20 acres.

Q. 15 or 20 acres altogether?

A. Yes, sir.

Mr. THOMPSON: Was that accumulation of that pier by dredging?

A. No, sir.

Q. Did they fill up with dredges or did it make itself?

A. It made itself.

Mr. SWETT: Ask him where the location of the park is.

Mr. THOMPSON: Do you know where the location of the park is?

A. Yes, sir.

Q. Where is it?

A. North of the city of Chicago, and the position you refer to now is north of North avenue.

Q. Did they make the land at Lincoln Park also—accumulate land by extending it out into the lake?

401 A. They built a breakwater south from North avenue about 4,000 feet long.

Q. That is here; that is from that point to there? (Indicating.)
A. Yes, sir.
Q. How much ground did they accumulate there?
A. A strip of land varying from 250 to 500 feet wide.
Q. You mean by "wide" running east into the lake?
A. Yes, sir; from a straight line. The shore was irregular when they built that breakwater, and it varied from 250 to 500 feet wide. That is the space of water which they filled up.
Mr. SWETT: How long was it?
A. 4,000 feet long.

Redirect examination by Mr. GREEN:

Q. You say it was filled up?
A. Yes, sir.
Q. How?
A. By dredging. [In pencil:] Not correct.
Q. From the outside of the pier?
A. Partly in that way and partly by bringing material there by teams, and partly by taking the dumpings from the river.
Q. That was not by accretion from the lake?
A. No, sir; nothing south from North avenue.
Q. How much did that pier that was run out there 1,000 feet cost per foot?
A. Between $14 and $15 per foot. I don't remember the exact figures.
Q. About what is the average life of such a pier as that?
A. That portion above the water is good for about 15 years.
402 Q. Then what would be necessary to do to hold the land there?
A. It should be cut down and rebuilt.
Q. And that would occur every 15 years?
A. Yes, sir.
Q. Now, General, you spoke of a little park just north of the Hyde Park Hotel. (Indicating.)
A. Yes, sir.
Q. That is about how far north of this land in question?
A. About two miles.
Q. No; the Hyde Park Hotel; that is 53d St.?
A. The pier at the Hyde Park Hotel is at 53d St.; yes, sir.
Q. And this is 59th St. here? (Indicating.)
A. Yes; that is 59th St. About six blocks.
Q. Is it not about two-thirds of a mile?
A. About two-thirds of a mile.
Q. From the north end of this property?
A. Yes, sir.
Q. Now, you say you built the breakwater there?
A. Yes, sir.
Q. In what year?
A. In 1874.
Q. How long was that?
A. 1,000 feet long.

Q. And it cost how much?
A. $14,000 per lineal foot.
Q. That was connected with the shore by what?
A. By a pier.
Q. If you had had to build that pier, how much would it have cost?
A. About $1,000.
Q. And $15,000 would have been the total cost of the work?
A. Yes, sir.
Q. Representing at the present time an investment at six per cent. of how much for ten years?
A. $24,000.
Q. $24,000?
A. Yes, sir.
Q. In that ten years it has made how much land?
403 A. Not to exceed 3 acres, in my opinion, in my observation.
Q. $8,000 an acre?
A. Yes, sir.
Q. What kind of land was it when you got it?
A. It was sand.
Q. Has the sand filled to the level all through those three acres to the level of the adjoining shore?
A. Scarcely; there is a portion of it at high water that is submerged.
Q. Now, are you familiar with the experiments of jetties on the south shore in the neighborhood of this land?

Mr. THOMPSON: We object to that on the ground that it is has been gone over in chief.

The COURT: You have gone into it, unless you have got an omitted question.

Mr. GREEN: Were you inquired by Col. Thompson in reference to the Morgan pier north of this little park pier?
A. I think he asked me what its effect was.
Q. What was its effect?
A. Its effect is partially the cause of this accretion; that is, it prevents the direct action of the waves to wash away these accretions made.
Q. Are you acquainted with the character of the south shore?
A. Yes, sir.
Q. Now, just tell us what the character of that shore is.
A. It is a low-lying shore, evidently an old lagoon filled up with light sand brought there by deposits of that character that would float in the water with no heavy material, scarcely any heavy
404 material whatever, and it was liable to be washed away at any time by a high lake action.
Q. I understood you to say that from that character of the soil that is the reason that it washes in and washes out?
A. Yes, sir.
Q. It hasn't any permanency in its character?
Q. It is uncertain and light in its character.

JASON H. SHEPHARD was then called as a witness on behalf of the defendant, —, being first duly sworn, testified a follows:

Direct examination by Mr. GREEN:

Q. What is your name?
A. Jason H. Shephard.
Q. What is your occupation?
A. Paying contractor.
Q. How long have you been in that business?
A. Since 1868.
Q. Alone or in a firm?
A. In a firm.
Q. What is the name of the firm?
A. Dolis & Shephard.
Q. Have you had any experience in filling up low land?
A. We have not particularly in low land, but we have had considerable experience in filling on street work, from high plases to low plases.
Q. Have you had experience in obtaining filling and putting it upon land, either on streets or otherwise?
A. Yes, we have.
Q. Do you know what the cost [is] of getting dirt and laying it and spreading it upon a piece of land in the village of Hyde Park?
A. We do when we know the surroundings.
405 Q. Let me call your attention to the piece of land in controversy in this suit (indicating map) this land, which borders upon Stony Island avenue, the north boundary being 59th St., the south boundary being 63rd St.—80 acres—and the shore piece directly east of that—the 34 acres. Now, what would it, in your opinion, have cost per cubic yard to fill that west 80 acres there by contract in 1870?
A. Where would we get the dirt?
Q. I don't know where you could find it; you must get it where you can.
A. During that time—about that time the firm that I was with furnished probably about 1,000 cars of clay from the canal bank down in East Park; we got a dollar a yard for that.
Mr. THOMPSON: You brought that from the west park of Chicago. Now, we are not talking about going ten miles for it.
The COURT: Give your judgment what it would cost.
Mr. STORRS: Get it where you could if you had to take it from another man's land.
A. It is hard to say unless I knew where to get the dirt.
Mr. GREEN: Was there any difficulty in getting dirt?
A. There is in that low ground.
The COURT: Assuming that you know the conditions and get the dirt where it would be the cheapest.
A. It would cost from somewhere about 50, 60, or 75 cents per yard to do that.
Mr. GREEN: A cubic yard?

A. Yes, sir.

406 Q. How much to fill out the lake shore; that 34 acres?

A. It would cost more on the lake shore, I should judge, than it would in there.

Q. Why?

A. It was had along there—that tract. We had to go into the lake and dredge it out, and it would cost considerable money to keep a scow and dredger dredging there.

Q. Supposing you filled it by dredging from the lake shore; how much would it cost to fill that shore piece in 1870 per cubic yard?

A. I have not done any of that work; I can only tell you what I do now. I never had any experience in that.

Q. You never had any experience in that?

A. No, sir.

Q. Never had any contracts of that sort?

A. No, sir.

Cross-examination by Mr. THOMPSON:

Q. Have you done any park work for the South Park Commissioners?

A. We have.

Q. You have done a great deal, have you not?

A. Yes, sir.

Q. Have you got any contracts with them now?

A. No, sir.

Q. Can you give us some idea of the amount of your contract work with these commissioners?

A. Well, I don't know as I can.

Q. Give us some idea of, say, how many thousand dollars' worth of work you have done; about how much; I don't ask the actual figures.

At least $100,000.

Q. $100,000?

A. Yes, sir.

Redirect examination by Mr. GREEN:

Q. When was it you did this work for the South Park Commissioners?

A. From the first boulevard building.

Q. What year; until when; about when?

A. Back in 1870, up to 1884.

407 Recross-examination by Mr. THOMPSON:

Q. This year?

A. We have not done any work for them this year.

Q. But up to this year?

A. Last year.

Q. They haven't done any street building this year?

A. I guess not.

JAMES WADSWORTH was then called as a witness on behalf of the defense, —, being first duly sworn, testified as follows:

Direct examination by Mr. GREEN:

Q. What is your name?
A. James Wadsworth.
Q. How old are you?
A. 56 last July.
Q. Where do you live?
A. I live in Hyde Park.
Q. Whereabouts in Hyde Park?
A. The southwest corner of 63d and Woodlawn avenue.
Q. (Pointing to map.) About how far is that from the west line of the Phillips tract?
A. About five blocks.
Q. Am I pointing to the right place on the map?
A. Pretty nearly, I think.
Q. Where is Woodlawn station?
A. It is about 1,300 feet east of my house.
Q. Well, on what street—what cross street.
A. 63d.
Q. Is it where the Illinois Central crosses 63d St.?
A. Yes, sir.
Q. And 63d St. is the same street you live on?
A. Yes, sir.
Q. And 63d St. is also the south boundary of the Phillips tract, is it not?
A. Yes, sir.
Q. How long have you lived in that same place?
A. 25 years last May.
Q. You therefore lived there between 1860 and 1870?
A. Yes, sir.
Q. Continuously?
A. Yes, sir; I went there in 1859.
408 Q. You went there in 1859, and have lived there continuously ever since?
A. Yes, sir.
Q. You know the Phillips tract?
A. Yes, sir.
Q. How long have you known that tract?
A. I began to know it in 1858.
Q. Please state how many houses there were on the west 80 of the Phillips tract in 1870?
A. Well, there has never *has* been a permanent residence on that tract; there has been a small house on the southwest corner, occupied by some employees of the park or by a policeman, or something of that kind.
Q. You mean of the whole tract?
A. Of the 80 you speak of.
Q. Is that the only residence you ever knew of being there?
A. I do not remember of any other on that tract.

Q. Take the tract of land between 59th St. and 63rd St, Stony Island avenue, and the Illinois Central (indicating), being the tract just west of the 80 in question, and tell me how many residences there were on that tract in 1870?

A. Not any.

Q. Were there any buildings or improvements of any kind there?

A. An old house stood on the north point—what would be now in the Midway Pleasance—just where the point of your stick is now. A house and a barn stood there when I went to Hyde Park to live.

Q. That is about the corner of old 59th St.?

A. Yes, sir; a partly finished house—it was not a new house when I went down there in 1858.

Q. Was that the only residence on that tract?

409 A. Well, after that house was removed, a Dutchman by the name of Schroeder had a small place next to that, close to the railroad.

Q. That old house you speak of didn't stay there?

A. No, sir; the boulevard took that away.

Q. Anybody but the Dutchman?

A. Between 59th and 63d?

Q. Yes, sir; and Stony Island avenue and the park?

A. The house on the south end of the tract? There was a house when I went there on what we knew as the Richards tract, right at 63d St.—there was an old house standing there.

Q. Was that there in 1870?

A. Yes, sir.

Q. Now, is there anything else?

A. No, sir.

Q. That is all on that tract?

A. Yes, sir.

Q. Take the next tract south, between 63- and 67th Sts., Stony Island avenue, and the Illinois Central right of way in 1870, how many houses were there on that tract?

A. Well, there was the Stuggart House, at the corner of Stony Island and 63d Sts., built by the Fitch Sons for their mother; there was the Sanders House, standing near the station on 63d St. It was standing there when I went there. It was built by Mr. Law in 1856, I guess. There was a house on Stony Island avenue, built by Wm. Fitch, a brother of Timothy Fitch, about a block south of 63d, and one or two others.

Q. About five in all?

A. I think there were not more than five.

Q. Do you know the name of any subdivision in that tract that I am now speaking of?

410 A. Yes, sir.

Q. What?

A. Robertson's subdivision.

Q. Upon Robertson's subdivision in 1870 how many houses were there?

A. I think not over five.

Q. Did that subdivision take in the whole of this tract between 63d and 67th and Stony Island avenue?

A. No, sir. When I went to Woodlawn there was only three parties. Mason owned the north and Robertson owned the other.

Q. And the houses you speak of are all on that tract?

A. Yes, sir.

Q. Now, take west of the tract. What was the subdivision adjoining Robertson's on the west.

A. In 1870?

Q. In 1870.

A. Waite & Bowen's subdivision ran——

Q. That ran from what street?

A. It ran from Madison avenue to Woodlawn avenue, east and west, from 63d to 67th St.

Q. That tract just west of the railroad there? (Indicating.)

A. Yes, sir.

Q. Now, upon that Waite & Bowen's subdivision, from 63d to 67th St., how many houses were there in 1870?

A. Not any.

Q. That was half a mile, wasn't it?

A. A half mile from——

Q. From 63- to 67th St.?

A. Yes, sir. I think it is possible that a house built by Robert Poley, adjoining the railroad at 67th St., may have been built before 1870—about that time—a small house, and the house is not there now.

Mr. STORRS: What became of the house; has it blown away?

A. It was removed east of the railroad.

411 Mr. GREEN: You will please look at the map that I have just hung up here, and tell me upon that map that I have just hung up here what tract of land that represents right there (indicating), so that we will get the whole lay of this thing. What is that? (Indicating.)

A. That is the Phillips tract.

Q. What does that represent there? (Indicating.)

A. I think that is the Robertson tract.

Q. The Robertson subdivision?

A. Yes, sir.

Q. And that is where you say there were five or six houses?

A. Five are all I can remember now.

Q. On this tract, directly west of the 35 acres, you say there was no house, except this one or two?

A. The house on Boulevard and the one on 63d, next the railroad.

Q. One here and one here? (Indicating.)

A. Yes, sir.

Q. Is this Waite & Bowen's subdivision?

A. Yes, sir.

Q. You say there was no house except this one of Poley's in 1870?

A. Down right there by the railroad, where the point of your stick is now.

Q. Now take the tract of land between 63d and 59th St., the railroad and Woodlawn avenue, and tell me, in 1870, in that whole territory, how many houses there were.

A. One.

Q. One?

A. Yes, sir; one on 63d by the railroad—there (indicating); west of the tract between Madison avenue and the railroad.

Q. There is one, two, three, eight, nine (indicating), as I understand you, in this whole territory from 59th St. to 67th St., and from Woodlawn avenue to Stony Island avenue there were not more than ten houses in 1870?

412

A. I guess, not ever eight or nine.

Q. Not over eight or nine?

A. No, sir.

Q. From 59th to 67th St., how far is it? (Indicating.)

A. That is a mile.

Q. Was there any change in that territory, in reference to residences, in 1871?

A. I think not.

Q. In 1872?

A. Well, Mr. Geo. Brown built a house on the west side of that block. Raise your stick up further west, now across the railroad; the next block—that block. He built a house on the west side of that block—about the middle of the block, fronting west.

Q. You mean in Waite & Bowen's subdivision, block 1?

A. Yes, sir.

Q. You think that was in 1872?

A. I don't think it was as early as 1872, but it may have been as early as 1872.

Q. Let me ask you, up to 1875, in this territory, from 59th to 67th, Woodlawn avenue to Stony Island avenue, what change was there, as far as residences?

A. Up to what time?

Q. 1875.

A. Well, there were some houses built on the Robertson subdivision.

Q. About when?

A. About 1872 or 1873.

Q. About how many?

A. About six or seven.

Q. Well, what other change? Any change in Waite & Bowen's?

A. No, sir; no, sir.

Q. Any change in the tract north of that to 59th street?

A. Nothing whatever.

Q. Any change in the tract south of Robertson's?

413

A. You have not inquired of me regarding that.

Q. Have not I?

A. No, sir.

Q. Any change in those 35 acres directly west of the Phillips tract?

A. No, sir.

Q. Now, take the 48 acres south of Robertson's subdivision, lying between Robertson's subdivision and 67th street and Stony Island avenue and the Illinois Central right of way.

A. Now, put you stick up above 67th street, close to the railroad, and a little further west up there (indicating), 66; a little higher up there (indicating), there was a house owned by Mr. Mulvey—a small house, big enough for a doctor's office, perhaps; he once made his home there; he staid there at nights, and used to cultivate strawberries there, and there was some flat land there, and he raised it up by hauling dirt from the right of way of the Illinois Central, and improved it somewhat, and built a house fronting on Stony Island avenue, and another one a little further north.

Q. Any other change up to 1875?

A. No change up to this time.

Q. I have not got up to this time yet.

A. In the 48 acres?

Q. Up to 1875, in the whole territory that I am speaking of between 59th, 67th, Woodlawn and Stony Island avenue-, there had been added about six houses in Robertson's subdivision?

A. Well, in Robertson's subdivision Mr. Winney came in some years ago—I cannot remember the year—and he built a house—a house in the southwest corner there (indicating), and the
414 house was built right near the Saunders' house, that is now occupied by Mrs. Rosa, some relative of Mr. Stinson's. It has been remodelled.

Q. These particulars we do not ask for; I want the number.

A. Then there have been a few houses built there once in awhile on the Robertson subdivision. I presume there are now 12 houses.

Q. Now, on this entire subdivision there are 12 houses?

A. I think there are perhaps 12 houses.

Q. Are there any houses on the tract of land between 59th and 63, and Stony Island avenue and the Illinois Central right of way?

A. Nothing, except the ones on 63d street; that old house remains there now.

Q. And that is all waste land except this one house?

A. It is unoccupied now.

Q. It is unoccupied now; it is unoccupied land?

A. Yes, sir.

Q. Does this 48-acre tract of land remain as it did in 1875?

A. Substantially.

Q. Only this one house?

A. Only this one house and two on Stony Island avenue.

Q. Now, up to 1880, was there any change in Waite & Bowen's subdivision?

A. I think not, except the house of Mr. Brown's.

Q. In the tract of land between 63 and 59th streets, Woodlawn avenue and the Illinois Central right of way, was there any change up to 1880; and, if so, what?

A. No change until last year—until the year 1884.

Q. Was that up to 1880—this whole territory here (indicating) of

a mile in length, from Woodlawn avenue to Stony Island avenue, had increased its population by about 7 or 8 houses?

A. To 1880.

415 Q. To 1880, 10 years?

A. That is about it.

Q. In 1870 were there any improvements in this neighborhood?

A. No, sir.

Q. Any sewer or water or lights—macadamized streets?

A. We had a box drain in 63d street put in about, probably, 1869 or 1870.

Q. What was that for?

A. To carry the water off the land west of the railroad and west of Woodlawn avenue into Lake Michigan.

Q. Was there any other improvements in this neighborhood except the box drain?

A. Side walks.

Q. Sidewalks along Stony Island avenue?

A. No, sir.

Q. There are not any there to-day, are there?

A. No, sir.

Q. When was Stony Island avenue first macadamized, if you remember?

A. Well, I guess about 1870.

Q. There was no street lamps there in 1870?

A. No street lights there last year.

Q. Not until last year?

A. 1883.

Q. No sewers?

A. Nothing but the box drain.

Q. No water pipes?

A. No, sir.

Mr. STORRS: What did you have there except prairie?

A. We had a good respectable community; good neighbors.

Mr. GREEN: Far apart, though?

A. Friendly anyway.

Q. Now you say there was Woodlawn station at the crossing of 63d street and the Illinois Central right of way?

A. Yes, sir.

Q. What was there there at that station?

A. This station-house that we built that cost $300; a frame building standing on posts.

416 Q. Were there some people who lived west of this station who used the station?

A. I used it; I lived west of it.

Q. Was it called Woodlawn station at that time?

A. Yes, sir; in 1858.

Q. In 1858?

A. Yes, sir; there was a station there before the house was built.

Q. How far was that station from, say, the middle of the Phillips tract on Stoney Island avenue?

A. Well, it was a little more than half a mile from the Stony Island avenue front.

Mr. THOMPSON: The Woodlawn depot?

A. Yes, sir.

Mr. GREEN: From the middle of it?

A. Yes, sir; just about half a mile.

Q. How far was the corner of 59th and Stony Island avenue from, say, the U. S. building that we are in now, by road?

A. The northwest corner of that tract?

Q. Oh, about how far?

A. About 7 miles and ¾ths.

Q. Mr. Wadsworth, in 1870, from the middle of the Phillips tract on Stony Island avenue, how far was it to the nearest school-house?

A. In 1870?

Q. In 1870.

A. Well, it was about ⅝ths of a mile.

Q. How far was it to the nearest church?

A. About the same, I guess; from ⅝ths to ¾th- of a mile.

Q. Where was the nearest church?

A. Corner of Washington avenue and 53d street.

Q. Down in the village of Hyde Park?

A. Yes, sir.

Q. How far was the nearest store?

A. The nearest store would be one or two. — Mr. Fitch had
417 a store on Stoney Island avenue at 64th street.

Q. What kind of a store?

A. A small grocery store; he kept a variety of articles such as people wanted.

Q. How far was it to the stores in the village of Hyde Park?

A. About ¾ths of a mile or ⅝ths of a mile.

Mr. DUNLEVY: You can see exactly how far it is from the block on the plat.

Mr. GREEN: How far was it to the nearest doctor?

A. Well, Dr. Flood was a little nearer.

Q. How far?

A. About ¾ths of a mile.

Mr. STORRS: Was Mr. Thompson the nearest lawyer?

Mr. THOMPSON: I think I was. It is good enough for me to live in.

Mr. GREEN: Have you ever been the owner of any property in Hyde Park?

A. Yes, sir.

Q. About how much?

A. Well, about 200 or 300 acres.

Q. Did you ever own any property in the vicinity of this Phillips tract?

A. I never had any nearer than Woodlawn avenue.

Q. Where you lived?

A. Yes, sir.

Q. Where has been the other property that you have owned?

A. West of that, north and south.

Q. In the vicinity of where the South parks are now located?

A. Yes, sir; I had 77½ acres fronting within a block of Midway Pleasance from Woodlawn avenue to Cottage Grove avenue and 27 acres from Cottage Grove avenue to 63d street; and I had 60 acres south of 63d street, west of Woodlawn avenue. I had at one time an interest in the property that is now the driving park.

418 Q. That is just south of the West Park?

A. One block south.

Q. Were you acquainted with the value of property in and about Hyde Park in 1870?

A. Yes, sir; I think I was.

Q. Did I understand you to say that you had ever been on the west 80 of the Phillips tract?

A. A great many times.

Q. Give us a description of that tract.

A. The west 80, the first property along Stony Island avenue, is a ridge with a little low land, slightly low between the ridge and Stony Island avenue in places, other places where the ridge comes to the avenue and that ridge. Well, I examined it within a day or two. I could give the dimensions of it, of that ridge, pretty near.

Q. Just describe the land.

A. But perhaps the west 20 acres, or maybe the west 22 acres, go as a ridge higher from one to two or three or four feet—three feet, perhaps, above Stony Island avenue elevation, and is covered with small oak trees, very nice trees. A very nice piece of ground east of that is a piece of woodland that is wider than the ridge, perhaps a hundred or two hundred feet, perhaps 500 or 600 feet, wide on 63d street, and extending north to 59th street, and rising as you go north. The land at 63d street is lower, nearer the level of the lake, than the land on 59th street, gradually getting better as you

419 go towards 59th street, and in some places the vale, as you might call it, is wider as you go north.

Q. About how much of the land do you say is high land, the land there, and how much of it do you say is low land in that 80?

A. I think there is about 45 acres of very good land, and about 35 acres of wood land.

Q. Do you remember what was called the Phillips subdivision in the acres lots fronting on Stoney Island avenue?

A. I know pretty near where it was.

Q. What, in your opinion, was the fair cash value, the fair market value, of the Stony Island front, by acre lots, of the west 80 acres of land in controversy on the 27th day of August, 1870, without taking into consideration the effect produced upon the lands in that vicinity by the location of the park?

Objected to.

Mr. SWETT: I insist the ruling should be changed.

The COURT: I think the supreme court have stated here they are entitled to the fair cash value of the land at the time; it being theirs, they have a right to use it.

Mr. GREEN: That is precisely what my question is.

Mr. SWETT: No; it is coupled with a condition that it shall not share in the rise in value of the park.

The COURT: So far as I have gone, I said they could not introduce evidence of sales outside abutting the property, and then draw an inference of what the property in controversy was worth,
420 this outside property being influenced by the location of the park, and subject to the assessments. Thus far I have simply excluded the evidence on the ruling of the supreme court of this State. It is not evidence fairly tending to show the value of the property in controversy, and therefore it is excluded. I have looked into the record of the case that Mr. Swett furnished me, and I must say that it is a little bit misleading in some of its particulars, but I am not changing the ruling I made.

Mr. GREEN: Does your honor hold that that is an improper question?

The COURT: No; you have a right to prove. The real question is what the property in controversy was worth. You have a right to analyze it. You have a right to show what the property was worth. I have not refused to let your side show what the value of the property in controversy was uninfluenced by the park, and what it was worth influenced by the park.

Mr. STORRS: We will reserve the question, then,

The COURT: You may ask this question and they can do the same thing. Read the question.

(Question read.)

Objected to.

The COURT: The lands in the vicinity you say, you don't say the effect upon the lands do you?

Mr. GREEN: Yes.

The COURT: You say "without taking into effect the influence of the establishment of the park of the lands in that vicinity."

Mr. GREEN: Yes, sir.

421 Mr. Reporter, add to that question "outside of the boundaries of the park."

Mr. SWETT: That does not cover the question.

Mr. GREEN: It covers my question. Read the question, Mr. Reporter, as I have amended it.

REPORTER: "What, in your opinion, was the fair cash value of the 'Stony Island front, by acre lots, of the west 80 acres of land' in controversy, on the 27th day of August, 1870, without taking into consideration the effect produced upon the lands in that vicinity by the location of the park, outside of the boundaries of the park"

The COURT: You are going on the theory that they are to be deprived of all benefit of the establishment of the park.

Mr. SWETT: Certainly.

The COURT: The supreme court expressly held the other way.

Mr. GREEN: I do not understand anything of the sort.

The COURT: I will sustain the objection for the present and will hear you further Monday morning.

Mr. GREEN:

Q. What, in your opinion, was the fair cash market value of the Stony Island avenue front of the west 80 acres in controversy, on the 27th of August, 1870?

A. You mean the ridge land there (indicating), the best portion of that 80, you don't mean just simply the front 150 feet deep, or whatever it would measure?

Q. Being the west 26 acres of the west 80 acres in controversy?

422 A. Well, there is a difference from the other question as to their being acre lots.

Q. I know it. There is the question; answer the question.

A. Well, I consider it worth at the time, in cash, somewhere from $1,000 to $1,500.

Mr. STORRS: Your honor, on this other matter on which Mr Swett seems to have handed you a record—we don't know what record, and we have never seen it, but a record of some case--he has not given us any notice, and we desire to be heard on that.

The COURT: (To witness.) What price did you say?

A. I said from 10 to 1,500 dollars.

The COURT: Per acre?

A. Yes, sir; per acre.

Mr. STORRS: Now, your honor, we have not seen what Mr. Swett has handed up to you.

The COURT: It is nothing but a copy of a case.

Mr. STORRS: But we have not seen it, and it should be presented in open court. The papers should be presented in open court. We propose to do all our business in open court.

Mr. FULLER: What is the record, General?

Mr. STORRS: I do not know what it is.

Mr. GROSSCUP: It is an abstract of a case in Cook county.

At which point court adjourned until Monday, December 8th, at 11 o'clock.

423 MONDAY, *December 8th*, 1884.

Court met, pursuant to adjournment, at eleven a. m., & JAMES WADSWORTH was recalled for continued examination.

Mr. GREEN: On Saturday you were asked the value of the west 26 acres of this eighty. (Indicating.) Now, what did you give as the value of the west 26 acres, or did you divide it that way?

A. Well, I assume that from the way the question was put that the 26 acres was supposed — about the quantity of ridge land on the west line of the eighty. I value it in that way as being the ridge land.

Q. That is, for this ridge land that runs through here? (Indicating.)

A. Yes, sir.

A. Now, I will ask you this general question—you can answer it in your own way: First, let me ask, you *to* know the time that the park act was passed?

A. Yes, sir.

Q. Were you cognizant of the proceedings in reference to the location of the park before and after that time?

A. Yes, sir; I know pretty nearly what was going on.

Q. Did this land that we are now considering form any portion of the land selected for the park?

424 A. Selected by the Legislature?

Q. Yes, selected by the Legislature.

A. Yes, sir.

Q. What, in your opinion, was the fair cash market value of the west eighty acres on the 27th of August, 1870, under consideration, as it stood, dividing it, if you so please, into different pieces?

A. Of the whole eighty?

Q. Of the whole eighty; and divide it up as you please.

A. Well, if it is in evidence before the court, the quantity in that west ridge is about 26 acres.

Q. No, as the evidence stands, in the west ridge there are 13 acres of high land and 12 acres of low lands; do you know what it is yourself?

The COURT: He asks your judgment. Knowing it as you do, what is the value?

A. I think that west [is] 26 acres.

Mr. STORRS: Give the value of the whole eighty.

The COURT: He has already given his opinion as to the 26 acres. He said the other day that that was worth from one thousand to fifteen hundred dollars per acre; now he is asked what, in his opinion, the entire eighty acres is worth.

Mr. GREEN: Dividing it as he sees it.

A. I have not made the survey accurately enough to figure it out, you know, but I think it would be fair, in my judgment, in my estimate, to place a certain price upon the wet land and certain

425 price upon the dry land; that is what I would like to do, but if the evidence shows the quantity, that will fix the amount it came to.

Q. On an average; do it that way.

A. I would value the 26 acres as I did on Saturday, of course. I would value the swell between the two ridges.

Q. This land here? (Indicating.)

A. Yes, sir; at from $25 to $200 per acre.

Q. And then the second ridge here? (Indicating.)

A. I think that is worth about $800 in its situation.

Q. At that time?

A. Yes, sir; at that time.

The COURT: What is worth $800?

A. The east ridge of the 80. A computation as to the quantity would only be conjecture.

Mr. GREEN: Were you familiar with the shore piece in 1870?

A. Yes, sir.

Q. I wish you would describe that briefly to the jury.

A. Well, in 1870 the shore piece immediately at the shore and immediately at 63rd street was at an elevation—perhaps 5 or 6 acres

of pretty nice ground; if the ground west of it had been as good as that, that piece would have been a nice piece of ground. It was elevated, perhaps, maybe from 3 to 7 feet above the lake and extending lengthwise up and down the shore, probably six acres of that; then north of that would be a place where the slough came almost to the margin of the water, and north of that was another elevation—not so much, not quite so high—about four acres,
426 perhaps. Then west of that, between that and what I would call the middle ridge, is a very deep slough—a parcel of very low land, under water generally. In the 25 years that I have lived there I have very rarely seen it above water so that a man could go across it dry shod. The centre of it would be deeper of course than in other places. There would be a place near when you go in where it would be a trifle higher than it would be in the center of the slough, where the current was. There was a little current there where the water from one direction passed through under 63rd St. and out into the lake, into what we call Mr. Phillips' harbor in early times.

Q. I wan't to direct your attention simply to the 34 acres on the shore, which it is conceded were there in 1870; that is, there was eighty that we are talking about—the west eighty, and between that another eighty, and then 34 acres on the shore. Does this description you have given apply to the 34 acres on the shore as it lies upon the map (indicating) which is introduced in evidence and made by Mr. Wait?

A. Yes, sir. Will you let me take that stick a moment?

Q. Yes, sir.

A. (Indicating map.) I suppose this is the highlands?

Q. Yes, sir?

A. I should have thought it extended further north just from my own mind, and then some high land up here. I estimated
427 this about 6 acres, and this up here about four.

Q. Was there between those two a sort of sand ridge on the shore?

A. Yes, sir, a little along there, where the sand had washed up.

Q. Well, then, what was back of the high land and the sand ridge in the 34 acres?

A. Wet land.

Q. How high was that sand ridge in 1870 above the lake?

A. I did not survey it; I suppose you know.

Q. Give an estimate. Is it fifty feet high?

A. Oh, two or three feet.

Q. Take your chair again, please. What, in your opinion, was the cash value of that 34-acre shore piece on the 27th of August, 1870?

A. I think that the S. E. corner there (indicating) was worth $600 an acre—say, for six acres; and, I think, the four acres above that, which I have described, was worth $400 per acre; then the remainder of the 34 acres had a speculative value.

The COURT: What do you think it was worth?

A. I think, about $100 per acre.

Cross-examination by Mr. THOMPSON:

Q. Mr. Wadsworth you have given your estimate of value in August, 1870, have you not?

A. Yes, sir.

Q. Did you in 1870 know of any land, high or low, within a mile of this shore piece, selling for any such prices as you have named there?

Objected to. Overruled. Exception.

A. I do not call any to mind now.

Mr. STORRS: The court will understand before we get through with this case that we have examined this decision as thoroughly
428 as the other side have, and by and bye we are going to argue this entire question on all these instructions, and we simply want to reserve the point, and understand that up to this time the court adheres to the rulings originally made as to the value of outside property; or, if there is to be any change made in that, we want to know it in advance.

The COURT: This is somewhat different in cross-examination; they want to know to what extent he has knowledge.

Mr. STORRS: We propose the objection early.

The COURT: Yes.

Mr. THOMPSON: Do you remember of any sale inside of that entire park system, within a year of the date which you have fixed, of property selling for any such sum as you have named for the lake-shore piece?

Mr. STORRS: Now, that is objected to, too.

Mr. THOMPSON: I simply ask what he knows.

The COURT: Answer.

A. I do not remember any such sale, and I do not remember any such land in the entire system as being sold.

Mr. THOMPSON: Q. What difference was there between the land that you have named, so far as the property on the shore and the property north of it and the property south of it —?

A. The good land?

Q. Yes; that you say was 6 feet high on the shore.

429 A. The good land south of it. You would probably include in that what we know as the Eaton tract and Dunlevy tract.

Q. No, I am speaking about the lake shore.

A. The lake shore?

Q. Yes, sir; the lake shore.

A. The difference between this good land north of 63rd St. and the good land south of 63rd St.?

Q. Was there any difference?

A. There was.

Q. What was the difference?

A. The difference was that the ridge was much wider south of 63rd St., and more capable of being developed into a subdivision.

Q. How was it north?

A. North?

Q. Yes, sir; up here. (Indicating.) How was it up here?
A. North of 59th St.?
Q. Yes, sir.
A. Well, there was a ridge of some width to there. (Indicating.)
Q. Was it any wider here than it was there (indicating), and wider than it was here? (Indicating)
A. Yes, sir.
Q. Is that your judgment?
A. Yes, sir; my recollection.
Q. Are you positive?
A. I am quite sure; I have examined the land a great many times.
Q. Now, you speak of a spot as always having water on it on this 34 acres. (Indicating.) Now, that was the spot that was commonly known as the Phillips slough, wasn't it?
A. Yes, sir.
Q. That is it; and on this map that you have been looking at it is designated right there, isn't it? (Indicating.)
A. Why, no; that is about where the harbor was.
Q. That is the Phillips slough, isn't it? (Indicating.)
A. So is this all along down here. (Indicating.)
430 Q. Is not that the spot that you know as the Phillips slough?
A. No, sir.
Q. Where was it?
A. That is the outlet on the Phillips land.
Q. Whereabouts was the Phillips slough?
A. All along down here. (Indicating.)
Q. Of the whole thing?
A. Yes, sir.
Q. And you say that water ran over the entire west portion of that 34 acres?
A. Yes, sir.
Q. Is that what you say?
A. I think so.
Q. Whereabouts is the lowest part of that?
A. If this is where the water went under 63rd St., it would be at this point. (Indicating.)
Q. That is not on the 34 acres at all?
A. No, sir.
Q. Now, in 1870, were these ditches upon this property?
A. Yes, sir.
Q. Did the water run in those ditches?
A. It stood in them.
Q. It stood in them?
A. Yes, sir.
Q. Why did it stand in them?
A. Because there was no chance for it to run off; there is very little rise to the land, Mr. Thompson.
Q. If the surface of the land was higher than the lake it would run off, wouldn't it?
A. Off this land?
Q. Yes; off this land.

A. Yes, sir.

Q. But you say that it didn't run off of it—is that your testimony?

A. The ditches were constructed months before I went to that country to live—1859. After I went there Mr. Phillips either did not have money enough, or else disposition, to improve the ditches and keep them open; they gradully became imperative.

Q. When you went there, was this land wet?

A. Yes, sir.

Q. This 34 acres?

431 A. Yes, sir.

Q. Was this other? (Indicating.) (*Indicating.*)

A. Yes, sir.

Q. The eighty acres?

A. This land here? (Indicating.)

Q. I am speaking of the low portion of the eighty acres?

[A.] It has always been wet.

Q. Is it to-day?

A. It was day before yesterday.

Q. During that rain we had?

A. Before the rain.

Q. Before the rain there was water on it?

A. Yes, sir.

Q. Where is the water?

A. On that wet land; the water was nearly up to twelve inches.

Q. But there was water down below twelve inches, you think?

A. I don't think anything about it; I know there was.

Q. Did you dig down to find out?

A. I got into the water, in going across it, above my instep, and wet my pantaloons.

Q. Did you examine to see whether this ditch was open that emptied into 63rd St?

A. I did not.

Q. Where did you get into the water?

A. On this (indicating) and on this (indicating); I crossed on both of those Friday.

Q. Was this ditch open here? (Indicating.)

A. Yes, sir.

Q. The 63rd-St. ditch?

A. Yes, sir.

Q. Was it open at the lake?

A. Yes, sir.

Q. Did you go down to see?

A. It was open.

Q. Had it just been opened?

A. I cannot tell.

Q. Yes you can tell; you can tell whether the dirt was thoroughly washed out.

A. I- did not seem to be so at any recent time.

Q. Was this ditch in through 69*rd* St. open?

A. I didn't examine it.

432 Q. Was the 59th St. open to the lake?

A. You mean at the pier?

Q. I mean this ditch running along here. (Indicating.)

A. I didn't examine it.

Q. Now, you have given your ideas of value. Where in Hyde Park, within two miles of that lake shore piece, in 1870, did you ever hear of a piece of property selling at $150 an acre?

A. I cannot call one to mind. There was no land within two miles of that as poor as that was. The nearest we could go to it would be down about 68th St.

Q. On the same slough?

A. Yes, sir.

Q. Does this slough run south of 63rd St.?

A. Yes, sir.

Q. Where does this slough go and what is the character of that as it goes south—I am talking about this slough what you call Phillips' slough, starting on the north end of this 34 acres and running south—where does that go?

A. It goes down, if you know.

Q. I know, but I want the jury to know.

A. Well, I want to explain to you.

Q. Yes, that is right; go on and explain.

A. That slough runs south across a piece of land that we used to call the Dunlevy tract, that Mr. Blackwell lived on

Q. That is in the park?

A. I think it is now in the park; I think it was litigated as the Colehour tract.

Q. That piece is condemned?

A. Yes, sir.

Q. Now, where else does it go?

A. It goes about one-half to three-quarters of a mile south of that. (Indicating.)

433 Q. What is the width of it after it passes the park limits?

A. Well, at the point where John Fitch's one-legged railroad went across it—this piece.

Q. That is on the South Park line?

A. Yes, sir; about 1,000 feet wide there.

Q. Now, go south of that half a mile and how wide was it?

A. When you get down pretty near where Crosterr used to live, where the Illinois Central crosses it now, it began to run out, and as you get two or three blocks south of that it would be nice mowing land, without bog, but not ridge land.

Q. Was there water near where you resided, between where you resided and the Illinois Central, when you first went there?

A. In very wet times; a place about half way from my house to the depot there that water used to stand in.

Q. How deep?

A. From nothing to six inches.

Q. Didn't it stand any deeper than that?

A. I guess not often.

Q. How about this piece right here—right near railroad? (Indicating.)

A. Do you mean the 17 acres that Mr. Loveland bought?
Q. Yes, sir.
A. That is pretty wet.
Q. That is wetter than you ever saw the eighty acres, isn't it?
A. No, sir.
Q. The water stands there prior to the cutting of that ditch there? (Indicating.)
A. It was wet land, but it wasn't so wet as the Phillips land.
Q. Was that Phillips land mown?
434 A. I saw Friday when I examined it that the west slough had been mown and the hay hauled off.
Q. Yes, sir; still on this eighty acres?
A. Yes, sir; and a portion of this slough had been mown and the hay hauled off. This had not been mown at all. (Indicating.)
Q. This centre eighty (indicating) we have nothing to do with.
A. Now, on this ground here (indicating) that I have been testifying to I saw where some party had gone in there with a mowing-machine this summer, evidently, from its appearance, and cut the rods or rushes or twigs, or whatever you would call it—wild grass, wild rye—cut it down and ran a swath as far down as this line here (indicating), and down and back towards the high ground again—but they did not get the hay off; it had not been raked and it is not to-day. It was not Saturday, and I don't think it is to-day.
Q. On this 80 acres (indicating) the hay has all been taken off of it?
A. I should think it had. That is pretty good hay land—part of it down here (indicating) is wider.
Q. Down south, you mean?
A. Towards 63rd street.
Q. Do you know of a single sale in Hyde Park in 1870 in the township?
A. I have not examined the records.
Q. Do you now remember any sale in 1870?
A. I should say about Woodlawn, near where I live.
435 Q. Do you know, can you name them now, and be willing to swear they took place in 1870?
A. Yes, sir.
Q. Well, where were they?
A. There was a sale west of my house there.
Q. Of how much, in 1870?
A. I bought in April, 1870; it might have been, possibly, in 1871—the latter part of 1870 or 1871—the latter part of '70 or '71.
Q. Have you refreshed your memory since *since* you last testified in this case?
A. Somewhat.
Q. About that sale?
A. Somewhat.
Q. Well, how did you refresh your memory about that sale since you last testified? What did you do?
A. I consulted Mr. Handy's indices.
Q. Then you have been looking for sales?

A. Somewhat, in that subdivision.
Q. For that year?
A. Yes, sir.
Q. Is that the only one you now have in mind?
A. I only examined in that subdivision and in the eighty northeast of my house there. (Indicating.)
Q. Do you swear that you bought west of your house in 1870, and that you got that information from Mr. Handy's index?
A. I swear I bought a fifty-foot lot from Mr. Clark in 1870 or 1871—early in 1871.
Q. Which was it?
A. I am inclined to think it was in the spring of 1871—a fifty-foot lot.
Q. Now, how large is the township of Hyde Park—how many miles does it run west of this property?
A. Of this property?
Q. Yes, of this property?
436 A. It runs a mile and a half; one mile and a half.
Q. From Stony Island avenue to Cottage Grove avenue is just a mile, isn't it?
A. Just half a mile.
Q. What; it is half a mile from Stony avenue to Woodlawn where you live?
A. You say to Cottage Grove Ave.?
Q. Yes, sir; it is just a mile isn't it?
A. Yes, sir; just a mile.
Q. From Cottage Grove avenue?
A. It is just two miles.
Q. It is just two miles, isn't it?
A. Yes, sir; just two miles.
Q. And what is the length of Hyde Park?
A. About 12 miles.
Q. About 12 miles long?
A. Yes, sir.
Q. How wide was it at its southern end; about how wide?
A. I guess about four miles.
Q. Do you remember about how many square miles there are in the township?
A. No, sir.
Q. Do you know of any sale within half a mile of this; well, it is a mile of this lake shore piece in 1870; he says he does not know of any in 1870; within two years of this time that you fixed your valuation at double, or less than double, any of the prices which you have named?

Mr. GREEN: I object to the form of the question.
The COURT: He says he does not know of any at all.
Mr. THOMPSON: He does not say for what price within two years of the time.
WITNESS: I understand you are inquiring about 34 acres now?
Q. Within a mile of that 34 acres?

437 A. That 34 acres is a mile from my house; just a mile; if this eighty here (indicating) and this is eighty here (indicating)?

Q. Yes.

A. Two 80's between Stony Island avenue and 34 acres?

Q. Yes.

A. Then I don't know.

Redirect examination by Mr. GREEN:

Q. Do you remember any sales in 1869, within two miles of the west line of the west 80?

A. Yes, sir.

Q. Where?

A. I bought myself in 1869—the latter part of 1869—in the south half of the southwest ¼, 23, 38, 14.

Mr. THOMPSON: I did not examine him within two miles.

The COURT: I understood him to say two miles.

Mr. GREEN: He has gone all over the whole township of Hyde Park.

Mr. THOMPSON: Your honor, if you are going to let them in, we are perfectly willing to let them in.

The COURT: I will let that question go.

Mr. GREEN: Where was that land?

The COURT: (To witness.) How far was it from the land; he asks was it two miles?

A. Yes.

Mr. GREEN: Where was it?

A. It is half a mile west of the west 80, east and west, and 80 rods south of the west 80, east and west.

Q. And between what streets?

A. Between 65th and 66th Sts., fronting 65th, fronting north on 65th.

Mr. THOMPSON: Is that the park lot?

A. No, sir.

Mr. GREEN: Fronting north on 65th, and between what other streets?

438 A. West Woodlawn avenue; 8 rods by 20 on the ridge.

Q. How many acres?

A. One acre; the best acre in that farm of 80 acres.

Q. You bought that in 1869?

A. Yes, sir; the latter part of 1869; a single acre.

Q. Do you know of any other sales, within the limit that I have named, in 1869?

A. I do not know as I can testify definitely about specific sales in that year between those limits.

Q. Did you, in 1869 and 1870, know of these sales, or keep run of the sales and purchases in that vicinity?

A. Well, I know of them as I would hear of them; I was dealing in lands.

Objected to.

Mr. GREEN: I am asking about other sales.

The COURT: He does not know of any other sales.

Mr. GREEN: I want to know if he knew of them at the time.

The COURT: (To witness.) Do you recollect of any other sales?

A. I cannot call them to mind and fix the time of particular sales in 1869.

The COURT: What was the time you asked, Mr. Green?

Mr. GREEN: 1869.

WITNESS: I sold a large tract just before that for which I hadn't got paid, and for which I took papers, and which paper I sold and guaranteed; I was watching lest it might come back on my hands; it was not due till 1871, so I kept posted.

The COURT: It is hardly necessary to go into this, Mr. Green.

Mr. GREEN: I only wanted to ask this, if your honor please,
439 to show that it was necessary at that time to keep posted—to keep run of the prices as which property was sold at that time. That is the only object at this time.

The COURT: Now, if you both desire to go into outside sales, say so, and let us go into it.

Mr. FULLER: No, sir.

The COURT: You are both intimating it, and if you both desire to show outside sales, go on and do it?

Mr. THOMPSON: We do.

Mr. STORRS: I think it fair to the court that we state our position. I do not think we have trenched on you honor's rule. Col Thompson has asked as to the experience and knowledge of this witness for two years preceeding the time fixed by this decree as to other sales. Now, then, is it not fair for us to say that that lays the foundation for us to ask questions without being complicated by the rule which your honor has laid down. He asks the knowledge of this witness as to sales back in 1868. On cross-examination I objected and your honor ruled it in. Now, why should we be complicated by that situation of affairs? Let us take the thing just as it transpires It frequently happens, your honor, that a man on cross-examination may open the door to an examination which he does not wish to have investigated, and yet it does not bind the other side who pursues the cross-examination.

440 The COURT: I- cross-examination they can take some latitude with that witness that you cannot. For instance, they may care to know to what extent he was qualified to testify. What did he know of business in that neighborhood generally. All this [is] to let the jury see how far he is qualified to give his opinion. What his opinion may be worth. They simply asked him what he had observed.

Mr. STORRS: You know that that was not the purport of the question.

The COURT: They would be entitled to it for that purpose.

Mr. STORRS: But you know, your honor, it was not for that purpose.

The COURT: I cannot look into——.

Mr. STORRS: They asked this question away in this latitude and

that, east, south, north, if he had ever heard of any sales made for that price. Now, that, of course, may be for a twofold effect, but the real effect is, and your honor sees it just as well as I do; your honor sees that the tendency of the inquiry is not to test the knowledge of the witness at all, but is simply to show that the value he has given is incorrect. That is all there is about it. Now, they open the door, but we do not care to investigate. I objected formally in order to save the position which we have maintained from the beginning of this case and your honor ruled it in. Now, then, having
441 tried three points of the compass and having opened the door two years preceeding the time fixed by this court for the inquiry, we have the right to do the same thing ourselves. We ask a question upon another point of the compass. I do not care about pressing it, but I do care about saving our record. What I have been saying is simply to preserve the reputation which we have held up to this time before this court.

Mr. GREEN: Col. Thompson asked you about the spot called the Phillips slough. How big a spot was the Phillips slough?

A. Fifty, 60, or 70 acres.

Q. You speak of some of the slough land between the two ridges as having been mown. What kind of grass did they get off of that?

A. Well, close to the ridges you would get very nice prairie hay; good prairie hay.

Q. What is the rest?

A. Then in the upper grounds you would get coarser hay, a hay that does very well for roughness for stock, but not a nice quality of prairie hay.

Q. You were asked about this slough and how far it continued. What is the character of the land as it recedes from the lake in Hyde Park?

A. There at Hyde Park?

Q. As it goes back from the lake?

A. That varies; there are places where the land is pretty well elevated.

442 Q. I understand, but is not there a general conformation of the land as it goes back from the lake?

A. The whole town is in ridges and sloughs.

Q. A slough and a ridge, and a slough and a ridge, is it?

A. Yes, sir.

Q. As you go back, do the sloughs and ridges rise or do they fall?

A. They rise until you get west of Cottage Grove Ave.; then they fall off again.

Recross-examination by Mr. THOMPSON:

Q. I will ask you one more question. Did you assist at all in making the valuations that were placed by the commissioners upon the outside property?

A. I think not at all.

Q. Were not you consulted about that at all?
A. I think not.

Judge VAN H. HIGGINS was then called as a witness on behalf of the defendants, and, being first duly sworn, testified as follows:

Direct examination by Mr. GREEN:

[Q.] What is your name?
A. Van H. Higgins.
Q. Were do you live?
A. Well, my residence is in Hyde Park. I am at present, however, boarding in the city for the winter.
Q. How long have you resided in this county?
A. Well, I came here first in 1837, and staid here two or three years, but went away, and was away until 1852 or 1853, and have been here ever since.
443 Q. What has been your occupation since you have been in this county?
A. Since 1852 I have been practicing law part of the time and operating in real estate, and have been a judge a few years of the superior court.
Q. When did you commence to operate in real estate in this county?
A. Before I came here—that is to say, before I came here the last time—I was then residing at Galena and practicing law, and I came over here and saw how much cheaper property was, and I thought I would take a little money and put a little money in this county.
Q. Have you continued to deal in real estate in this county ever since?
A. Yes, sir.
Q. When did you first turn you attention to Hyde Park property?
A. Well, I may have bought something down there, but to no large amount, until I went there to live, which was in 1866; probably about that time.
Q. Was it in 1866 that you bought your residence there?
A. No; I bought that later—about 1869 or 1870. I should think I bought it the year before the fire. The fire was in 1871, and I bought it in 1870.
Q. Where was it that you resided in 1866?
A. In 1866–'7 I rented what is called the Haven property; I rented that for five years.
444 Q. Whereabouts is that?
A. Just north of 47th. It is about where 46th St. would be if it extended through to the lake; it would go through the north end of the property.
Q. And near what cross-street?
A. What do you mean by cross-street?
Q. I mean north and south.
A. Fronting on Hyde Park Ave., right next to the lake, it is just about 1,000 feet, I should say, north of Kenwood station.
Q. Kenwood station is at 47th St.?

A. Yes, sir.

Q. Where did you reside afterwards?

A. Across the street; I bought seven acres across the street; it had been subdivided into lots, but I bought the whole tract.

Q. How long did you live in that place?

A. I lived there until—I think I altered the premises there in 1870—moved in the fall of 1870, and resided there until about 4 or 5 years ago.

Q. Then you sold that place?

A. Until about 1880; I must have been there about nine years.

Q. And sold that place?

A. Yes, sir; I sold that place.

Q. Where did you go to live then?

A. I went to the corner of 50th street and Woodlawn avenue; I bough- a place there.

Q. About how far north of Mr. Wadsworth's place was that?

445 A. It must be a mile and a quarter or a mile and a half.

Q. And about how far east of the Drexel boulevard?

A. About 3 blocks east of the Drexel boulevard.

Q. That place you still own?

A. That place?

Q. The Williams place, where you live now.

A. Yes, sir.

Q. Have you owned any other property in Hyde Park?

A. Yes, sir.

Q. Commencing in 1866, when you first went in, can you give us any general idea of any piece of property that you have been the owner of in that town?

A. Well, I have bought my residence there, for which I paid $45,000 for the ground; and I bought some property down near where Long's house is. I bought two hundred feet there, and gave $10,000 for that, I think it was.

Q. You need not give us the prices, because prices in reference to outside sales have been ruled out.

The COURT: He has already given the price of two pieces.

Mr. FULLER: Well, we will ask that that be withdrawn.

WITNESS: I thought he wanted to know the char-cter of the purchases; whether it was of any considerable amount or whether they were trifling purchases. I misunderstood your object. I thought you wanted to know whether I had been operating largely——

446 Mr. GREEN: What other pieces of property have you been the owner of? My idea is to get at how extensive has been your dealings in real estate there.

A. I have operated chiefly in Chicago.

Q. Have you owned any other tracts there, or an interest in any other tracts in the neighborhood—say, of the South Park system and south of it?

A. I do not remember everything that I have handled, but I remember a lot right down by the 50th-street station that I sold to the music dealer, Mr. Caddy, near the Atkinson place—in fact, it is the lot that the Atkinson House stands on.

Q. Take south of the Midway Plaisance, have you been interested in any property there?

A. At the present time, or 4 or 5 years ago, I bought, in connection with the National Life Ins. Co., some property in that locality. We owned probably 80 or 100 acres in that low land—that marshy ground—very like the Phillips tract. Some of it was lower and some of it was higher. There are probably a good many other tracts, but I did not have my attention called to it, and do not remember them now.

Q. Have you ever bought land and subdivided it in this county?

A. Bless you; surely there is 25 acres. I did not think of
447 that; 25 acres about 45th St. There is 25 acres there that was subdivided. Then at 43rd St. we bought—my firm bought—13 acres there—a very large purchase. This house built by Smith there at the station, called the Orchard property, we bought that, and on Drexel boulevard there was 100 feet fronting on the boulevard, and 80 feet on 47th St., fronting on the boulevard, and then I have acted as agent for the Charter Oak. They had lands in there from 1876 to about one year ago. I did not have time to attend to it and gave it up, but I handled large amounts of land for them. There is 5 acres right there on 55th St., about Greenwood Ave.; and then they had several hundred feet on Drexel Ave., fronting on the boulevard; and they had large amounts there; I cannot recall them all; and had down south of 47th St. two or three hundred feet.

Q. You have had experience, as I asked you, in subdividing property, then?

A. Yes, sir; and in buying large tracts and selling them out in parcels for my clients, etc.

Q. Have you, since 1866 and 1867, been familiar with the price of property in the town of Hyde Park, in the vicinity of the park and boulevards?

A. Oh, yes; I went down there, I think, in 1866. Yes, I went down there in 1866; in 1867 I did not do much. I had some
448 money tied up, and after I had closed out all operations, I think it was in 1868, then I began to look around for a piece of property to buy.

Q. And from then on?

A. From then on I have operated more or less all the time.

Q. Do you remember when the park act was passed?

A. Yes, sir; substantially; I know when we understood it was passed, and it was stated in the papers, and they acted upon it.

Q. When did they commence to act upon it?

A. I think they commenced to act upon it in one session of the Legislature and failed, and I think that at the next session of the Legislature they passed it; I should think that was in 1869.

Q. February, 1869?

A. I could not state that, but I think it was the winter of 1869—1868 or 1869—that the act was passed.

Q. Were you familiar with the passage of that act upon land outside of and in proximity too the proposed parks and boulevards?

A. Oh, I think after that act was passed, I think, people began to look about for property bordering on the parks and on the boulevard and Midway Plaisance, which they thought would be effected by the improvements.

Q. What was the effect?

449 A. The tendency was that it commenced to advance from that time, I think, and I think it continued to advance up to 1875, not so rapidly at first as it did in 1871 or 1872, after they had got a little wild in speculating; I think the highest point reached was in the fall of 1873, and then the panic struck us in the fall of 1873.

Mr. THOMPSON: September?

A. Perhaps it was.

Mr. GREEN: Do you know the land called the Phillips tract?

A. Oh, yes; very well. Do you mean that land down there that is now occupied by the park?

Q. I mean the land between 59th, 63rd, Stony Island Ave., and the lake.

A. Yes, sir; I know it.

Q. When did you first become acquainted with that land?

A. I do not remember; I probably have known the land as land, but did not know it as the Phillips tract, probably, until about the time he was arrested; I was living then in the city; he was sued by Ker, and, I think, for a debt, and they levied on this land, and he was arrested; I went on his bail $14,000, and I remember his telling me what he had down there.

Q. Do you remember what year that was in?

A. I cannot state; it was away back; I think I was living

450 then on the corner of Jackson and Wabash Ave., and I should say that was about 1857, 1858, or 1859; it is pretty far to go back, and one cannot recall those things exactly.

Q. From that time on you, of course, knew it as a particular piece of land?

A. I knew it before, but I knew it from Phillips' talk from that time on; he was arrested and told me the story about being mixed up with Ker, etc.

Q. Did you have your attention called to that land in the latter part of 1869, and to the value of it?

A. Well, I do not know that I can fix a date exactly; I remember that about the time that he made some sort of contract with the Park Commissioners?

Mr. THOMPSON: We object to that.

Mr. GREEN: Object to what? I am not asking him for the contract.

WITNESS: I am only fixing a date.

Mr. THOMPSON: Don't go into the particulars unless you are asked.

Mr. GREEN: Just go on.

A. About the time that he had——

Mr. THOMPSON: Wait a moment, I do not desire to have the particulars of a transaction come in here of which the witness does not know the date, and, as a matter of fact, it was not in 1870 that this transaction took place at all.

Mr. FULLER: It was the 10th of December, 1869.

451 WITNESS: It is very difficult to fix a date as far back as 16 years.

Mr. SWETT: Is 1869 a proper date to bring into this case?

Mr. FULLER: This is merely relative as to having his attention called to the land; he has already said he had his attention called to it in 1858.

Mr. SWETT: You don't propose to draw out any valuation at that time?

Mr. GREEN: No, no, no; I just wanted to see when it was.

WITNESS: I cannot fix the date when it was; of course, at this distance of time I can only state what occurred.

Mr. THOMPSON: You need not name any figures.

Mr. GREEN: All I asked you was what were the circumstances that called your attention to it?

A. Phillips came to me with a contract——

Mr. SWETT: Wait a minute, I do not understand that it is proper to bring up a price as of the date of 1869.

Mr. THOMPSON: It is simply this, that the man Phillips came to the judge (the witnes) in reference to making a contract with the South Park Commissioners in regard to this land, which at that time was involved in this litigation, and we decline to have it come in here now as to what took place between these commissioners, who were not litigating us at that time.

452 Mr. FULLER: You cannot state it correctly even; the object of the question is not to bring out anything of that contract.

The COURT: Is this property within the park?

Mr. GREEN: The very park in question, your honor.

Mr. THOMPSON: It is a whole half section.

The COURT: Well, now, he says his attention was directed to it, and that he was familiar with this land; that is enough, it seems to me.

Mr. GREEN: That is all satisfactory to me.

Mr. GREEN: Did you know the value of this land, or did you have an opinion about the value of this land in August, 1870?

A. It is difficult to fix any exact date. I had an opinion about that time.

Q. What, in your judgment, was the fair cash market value of the west eighty of the Phillips tract on or about the 27th of August, 1870?

A. It would be difficult to fix what we would call a fixed value for that property. It had a value, of course, and a prudent man would not sell it unless he got something for it; but I do not

453 think it was sellable at any price; that kind of property was not sought after particularly; it would have been difficult to sell it. I thought about that time that $800 an acre was a desirable price to obtain for it.

Q. Do you think it was worth more than $800 per acre?

A. No; I would not have bought it at anything like that.

Q. Take the 34 acres which lay east of the middle 80, what we

call the shore piece of 34 acres; what, in your opinion, was the fair cash value of that shore piece on or about the 27th of August, 1870?

A. I would not like to fix upon any particular portion of the tract, because I do not think my attention was called to that 24 acres. I was looking at the whole tract as a tract, and looking at it as a tract I had an opinion of its value; but to pick out particulars I don't think I have. I know a general value of the land.

Q. You mean $800 for the whole tract by acres?

A. I think it was a very full price for it.

Q. You think it was a very full price?

A. Yes, sir.

454 The COURT: Does that include the 34 acres?

A. Yes, sir; it was part of the tract, as I understood. Of course, that back from the road was not worth so much, but I would not like to say how much it was worth, because some of it was higher than the other. It was all low; but the lowest was quite low, and some of it was under water.

At which point court adjourned till 2 p. m.

455 MONDAY, *December 8th*, 1884—2 p. m.

The direct examination of the witness, VAN H. HIGGINS, was continued by Mr. GREEN as follows:

456 Q. You have said, in your opinion, this land was unsalable in 1870. Why do you say it was unsalable? What are the reasons?

A. That kind of land would be unsalable at almost any time. Land that was so low that it would have to be filled to use for residence purposes would not be salable property; of course, it could be sold at some price, but you could not get very much for it, if you had to force it. That kind of land is not sought after. When one looks at property, they have to see what it is good for; for farm purposes it would be too high-priced. It would not be good for business, manufacturing, or residence purposes. You have to use it for something to make it valuable. What use could you apply this to? It would not be suitable for manufacturing and would not be suitable for residences. People in buying for residences would not choose that sort of property. That would be so low they would have to fill it, or use a portion of it by making excavations to get dirt to fill the rest. That is the reason why it would not be salable; people would rather buy something fit for use when they buy it, instead of making it fit for use. That would be my opinion, and, I think, you would find people who wanted to buy would want to see that they get something for their money.

Q. Have you any idea about how much it would cost to
457 fill that land so it would be suitable for residence purposes?

A. The cheapest way to fill it would be to take an excavation and make a canal, and take the dirt out of the canal. If one had a private residence he would have to make a lake and take it out that way. Probably if you had to buy the dirt it would costy fifty to

seventy-five cents a cubic yard. It would cost to raise it only 3 feet in the neighborhood of $2,500 an acre, but it would hardly be fit for residences, raising it up three feet; that is, the lowest part; you would not want to build where the ground was only three or five feet; that is, a house of any considerable value. It might be occupied. It was so far away it would hardly be occupied for small residences, and one would have to wait for that sort of property to make it available. You see any quantity of it there now.

Q. In buying land to subdivide in lots, how much gross profit would a man have to make to get out whole?

A. That would depend on how quick he would sell it. If he could subdivide it and make an auction and sell it right out, he might do it for a great deal less than if it took several years to close it up. Generally, to buy large tracts and subdivide it into lots you will find it takes several years to close it. I have had a good deal of experience in that line. I would not buy property to-day at
458 one-half what I would get for the lots. Suppose I would sell the lots at $100 apiece, making eight or ten to the acre, I would not give more than $500 an acre for that; it would not pay interest on the whole cost—taxes and assessments, and a man does not get out very much ahead if he makes less than 100 per cent. I bought a large tract over here, and I was figuring it up the other day. I bought it about 1854. That property I bought at $30 a foot, and counting 10 per cent., which we had to pay for money at that time, the property would cost nearly $500 a foot to-day; money at 7 per cent. doubles in $7\frac{2}{10}$ years, compounding it. Very few people know, who have not any experience, what it is to buy a tract of land, pay interest, taxes, and assessments, and peddle it out. And then the cost of dealing with so many people, recording deeds, mortgages, and all that sort of thing is an item of expense very few people understand; that is, the majority of people do not understand it.

Q. In saying it was unsalable, you do not refer to the fact that it was inside the park?

A. That had nothing to do with it. It was a question simply of the character of the property. Some property even now, as dull as things are, is salable. You can sell inside desirable property paying a good interest, but you cannot sell an outside piece. You
459 cannot sell an unproductive piece. A desirable piece of property will always sell better than an undesirable piece; that is what I meant in saying that it was undesirable property.

Cross-examination by Mr. THOMPSON:

Q. You testified before in this case?

A. I did.

Q. In the estimate which you have given here of $800 an acre?

A. I can hardly say I estimated it at that. I said I thought it was a good sale for that.

Q. You have in this case said that was your estimate, $800 an acre. I understand you estimated the entire Phillips tract?

A. That is what I was called upon to look at.

Q. In that estimate you mean $800 from Stony Island Ave. clear to the lake?

A. Yes, sir.

Q. Do you remember taking the two eighty's—that is, the west eighty in question in this suit, which lies along Stony Island avenue, and the east eighty adjoining, which is not in controversy in this suit? As between those two eighty's, which is the more valuable?

A. That nearest the road, nearest the railway, nearest the line of communication to the city; I think it was a little higher; I think it was better anywhere.

Q. I will ask you, what is the difference between those two eighty's, in your judgment?

A. I do not believe I looked at it close enough to have a definite idea, but I am clear it would be worth considerably more next the railway, next to Stony Island avenue.

460 Q. That was a macadamized street, was it not, in 1870?

A. I don't remember whether it was then or the year after. At about that time it was macadamized.

Q. Give us some idea of what difference you would make in those two eighty's.

A. I could only give you a general impression, because I did not go over the ground to look at it; — might be more difference than I thought. I do not think there would be less. I think the locality being near the railway — would be worth a couple of hundred dollars an acre. I think that would be as cheap at $800 as the other at $600.

Q. Do you remember your testimony before?

A. I do not know. I can only remember I must have stated what I thought was so. I do not think I could have gone very far from that. I must have had a pretty definite impression about values then.

Q. Was this question asked you in regard to those two eighty's before?

[A.] ——

Q. "The depot is at 57th street, only a few feet west of Stony Island avenue. Now, what would be the fair—I want to get at the value of this ground—I want to know "what would be the fair difference between those two eighty's?" On the estimate there is twice as much high ground on the "west eighty as on the east eighty," and the west eighty lying as it does.

461 A. I should think there would be considerable difference—it would be worth considerable more.

Q. How much? Give us a fair value—would it be two to one.

A. I should think it would be not as much as that—perhaps as much as eight to six. I should think it would be perhaps that, if it is as stated; perhaps it would be more than that—perhaps eight to five. I do not think I would differ from that now, as you put the question. Saying the west eighty had twice as much high ground as the other, I should think it would be as cheap at $800 as the other at $500. I think I would rather buy it at $800 than the other at five, if I had to buy either of them.

Q. Did you know of any sales in 1870 anywhere in that vicinity?

A. It is so difficult at this distance of time—twelve or fourteen years—to fix upon the exact time of the sale. I know of a number of sales in that vicinity. I know of some that were way below their value. I know some Bowen bought of Bates below its value.

Q. Was it in 1870?

A. I think 1870 or 1871. It was after he was appointed park commissioner.

Q. He was appointed early in 1869?

A. It was after that. I don't remember the precise year, but I should say it was 1870 or 1871.

Q. How far is that from this property?

A. I can show you on the map (referring to map). It is this eighty; but he bought that way below the market.

462 Q. Waite & Bowen's subdivision existed in 1870. Waite purchased and subdivided prior to that?

A. I would not undertake to state positively.

Q. You have no sale in your mind now that was made in 1870?

A. I would not undertake to say anything was done in 1870 that I did not do myself. There is nothing to fix it in my mind thirteen or fourteen years afterwards.

Q. Prior to 1870, and prior to the extension of the Government pier, do you know whether the shore made there or whether it washed away?

A. I am very familiar with this matter of the formation of these bars about the pier, because I was interested in this north pier.

Q. Prior to the extension of the Government pier?

A. The current of the lake on this side of the lake is south and on the other side is north. You put an obstruction anywhere on the shore of the lake, or almost anywhere, and sand will form behind on the north side of the pier, and generally that creates a current around the end of the pier and generally sweeps away at the end and south of the pier. That is the general effect of it, but in the last thirty-five years it has formed several acres north of the north pier. The current comes from the north, travelling south, and the sand is deposited on the north side of the pier. As it sweeps

463 around it forms a current and makes a kind of eddy that takes it away from the south side of the pier.

Q. That was done here?

A. Yes, sir; and it is natural that it would be so all along the shore—anywhere on the lake shore. On the west shore of the lake, the current running south, it will form a deposit on the north side of the pier, or sweeps it away by forming an eddy, and turns it away from the south side of the pier.

Q. Were you consulted with reference to the valuations that were made by the South Park Commissioners of the property lying around that vicinity?

Mr. FULLER: When?

Mr. THOMPSON: Prior to their making their valuations.

Mr. FULLER: What valuations?

Mr. THOMPSON: While they were making valuations of the property surrounding this park.

Mr. FULLER: In 1872?

Mr. THOMPSON: Were you consulted by the assessors who were making the valuations in 1870?

A. I have no recollection of it; I don't think I was.

HOMER N. HIBBARD was then called as a witness on behalf of the plaintiff, [and], being first duly sworn, testified as follows:

Direct examination by Mr. GREEN:

Q. What's your name?

A. Homer N. Hibbard.

Q. Where do you live, Mr. Hibbard?

A. I live in the village of Hyde Park, on the corner of 54th street and Jefferson avenue, where I have lived for nearly
464 twenty-five years.

Q. What has been your occupation, Mr. Hibbard, for the last twenty-five years?

A. I have been practicing law more or less, and was register in bankruptcy during the active matters——

Q. How long were you in that position?

A. Thirteen years; fourteen years.

Q. When did you go to reside in Hyde Park?

A. In the spring of 1860; but I had been there some in 1859, and more or less familiar with it since 1858.

Q. You have lived there continuously since 1860?

A. 1860; yes, sir.

Q. How far is your residence from the corner of Fifty-ninth street and Stony Island avenue?

A. Less than half a mile; I think, about a half a mile?

Q. Since you have been in Hyde Park have you been the owner of any real estate there?

A. Yes, sir; ever since I went there.

Q. You own the place where you live?

A. Yes, sir.

Q. How long have you owned the land and land adjoining?

A. The house itself and part of the lot; it stands in the name of my wife; but my old house, which I used to live in until within a few years, I own.

Q. How long have you owned that?

A. Twenty-four years and over; nearly twenty-four years and a half.

Q. Have you ever had any other dealings in any other lands in Hyde Park?

A. Yes, sir.

Q. Just give us a short description of some of the pieces you have owned, so as to give a general idea.

465 A. Well, I own now what, as it is subdivided, in the neighborhood of sixty lots at Grand Crossing, and an interest in one hundred and fifty acres; I own five acres on the corner of Fifty-

first street and Madison avenue—a block and another block—and own towards one thousand feet front in the neighborhood of my house and that vicinity, within thousand feet and, say, two thousand feet of the park.

Q. Well, you have [been] buying and selling Hyde Park real estate more or less ever since you have been residing in *the* Hyde Park?

A. Well, I have bought more than I have sold. I have sold some, but I have held most of the property I have ever owned there, excepting I had the title to seventy-five acres in Grand Crossing, in which I had an interest, which I sold in behalf of myself and other parties. The title was in my name.

Q. Grand Crossing; that is east of Hyde Park?

A. This land I was interested in was situated between Seventy-fifth street on the south and Seventy-first street on the north.

Q. That is southwest of East Park?

A. It is directly west from the East Park and southwest from the West Park—directly west from about the middle of the East Park; no, it is southwest.

Q. The park stops at Sixty-seventh street?

A. The park stops at Sixty-seventh street.

Q. Do you know a tract of land called the "Phillips tract?"

466 A. I believe I know what you designate

Q. A tract of land between Fifty-ninth street and Sixty-third street, and Stony Island avenue and the park?

A. Yes, sir; I know it; I have been over it a great many times.

Q. How long have you been familiar with it?

A. About twenty years.

Q. Have you ever been on that tract?

A. A great many times.

Q. About how many times?

A. I couldn't tell you; I suppose one thousand.

Q. One thousand times?

A. I presume so.

Mr. SWETT: That's presumption, rather; but state the facts.

A. Yes, I have driven across it twenty times the last year.

Q. That's a good many times—over one thousand?

A. I mean that in twenty years. The first time I went across it I went down to South Chicago to make a speech for Lincoln, and I drove the whole length of it—in the fall of 1860.

Q. Were you acquainted with the value of lands in that vicinity in 1870?

A. I think I can say I was, though I am not so familiar with it as a man would be who was in the real estate business.

Q. What, in your opinion, was the west eighty of the Phillips tract worth; what was its fair cash or market value on or about August 27th, 1870?

A. Take it altogether, averaging it right through?

Q. Average it and give the difference between the high

467 land and the low land of the west eighty.

A. Well, I think the land which bordered on Stony Island avenue, extending over into the sloughs on the east side—extending

from Stony Island avenue *extending* to the slough on the east side of the ridges—I believe, was worth from $1,000 to $1,200 an acre.

Q. Take the slough between the west ridge and the east ridge?

A. Well, I should not have been willing to give much for it—anything for it.

Q. What do you think it was fairly worth in the market, if it was worth anything?

A. Well, I don't believe, in my judgment, two hundred and fifty dollars would have been a high price for it an acre.

The COURT: You mean for the balance of the eighty-acre tract?

A. Yes, sir; the lowland from the foot of the ridge.

Q. You stated that part of it was worth, say, from a thousand to twelve hundred dollars an acre?

A. That which fronts on Stony Island avenue.

Q. You mean that balance of this eighty acres was worth from $200 to $250 an acre?

A. I mean that the land on the ridge, that part which lies five, six, or seven feet above the level of the lake, was worth from a thousand to twelve hundred dollars an acre.

Mr. GREEN: Then I understand you—the low land between the two ridges was worth from $200 to $250 an acre?

A. If I remember rightly—and I think I do—there is a strip of low land between the two ridges.

468 Q. Taking the land between the east ridge and the west ridge, or the west 80, what do you think that is worth—the market value—in 1870?

A. Is it where Mr. Phillips' house burnt down?

Q. It was on that same ridge, the west part of the west half of the 80 that I am now asking you about.

A. I don't know exactly where the 80 line is; I never was on it; I have had it pointed out to me—that is, its character mainly.

Q. East of Stony Island avenue?

A. From that I should think there would be some low land between the east and west ridges; there is low land between the two ridges, and it is worth perhaps two hundred dollars an acre; the land on Stony Island front, I say, I think — worth one thousand to twelve hundred dollars an acre; and the other—well, it is, in my opinion, worth perhaps six or eight hundred dollars an acre.

Q. For the second ridge?

A. For the second ridge.

Q. Now, was you acquainted with the shore along there in 1870?

A. Well, to some extent; I have been there a great many times.

Q. Now, skipping the next 80, it is agreed in this case that east of the next 80 there was a shore piece of thirty-four acres in August, 1870. What, in your opinion, was the fair cash value of that shore piece about August, 1870?

A. Well, that is high land, and some parts would furnish material to fill up part of the low land, and that would be part of its

469 value. There is some other, then, next this ridge, as I remember, containg some high places of sand, blown up there from the lake, and would be useful in filling up the low land to make

it of the same value. For any purposes of building I would not put it as high as I am inclined to put it but from my judgment of the fact that some of it could be used in filling up the low lands. Well, I should estimate it to be worth three or four hundred dollars an acre.

The COURT: The whole of it?

A. The whole of it; taking it as a whole; yes, sir. I think that is a high estimate.

Mr. GREEN: Since you have been in Hyde Park have you observed the action of the waves and wind upon the lake?

A. Yes, sir.

Q. When did you first commence to observe that action?

A. When I first went to Hyke Park to live.

Q. That was in 1860?

A. Yes, sir.

Q. Between 1860 and 1870 what was the effect of the waves and currents of Lake Michigan upon that south shore?

A. The greatest effect of it was constantly to wear it away. I have seen some storms well and observed the shore and there would be scooped out, and another storm would come and fill in, and the result from year to year from the time I went to Hyde Park of the storms was to cut away the shore.

Q. Didn't you observe that action prior to 1870?

A. I have observed it all along ever since I went to Hyde Park to live. I began to inquire what would be the cause, and I
470 satisfied myself about it. A whole mile—more than a mile—two miles where my house stands, and from a mile west of it it all drifted. Lake shore drifted along to Vincennes ridge, and the question came to my mind, Why has this been filling in here for a thousand years, or for ten thousand years, or forever, and now the stones commence taking away.

Q. Did you satisfy yourself of the reason?

A. I did.

Q. What was the reason?

A. The pier on the north side of the Chicago river. This made there about one hundred acres of land, all of which was under water about twenty feet deep when I first came to Chicago to live.

Q. When was that pier—that north pier—lengthened in such a way that this action of increase on the south shore stopped?

A. Well, there was a short pier on the north side of the Chicago river when I came to Chicago to live, upwards of thirty years ago, and that pier has been lengthened from time to time until now it is perhaps half a mile from the original inception of the pier. I don't know but more. I have not observed it lately, and am probably not a judge.

Q. Do you know how near that north pier was in 1870—about how near?

A. I don't know whether it has been lengthened since then or not.

Q. Well, was it ever lengthened after you came here?

A. Oh, yes, sir; when the light-house was built it was built at the end of that pier.

471 Q. When was that?

A. Well, it is, from my memory, fifteen or twenty years ago.

Q. Before 1870?

A. Yes, sir; and since then they have built a pier a long ways beyond and big- inside; that was with a light-house on; that was for distant mariners; as they approached the harbor they saw the small light and guided themselves by the samall light.

The COURT: Did I understand you to say that from 1860 to 1870 the harbor greatly encroached upon the south shore down there?

A. Yes, sir.

Cross-examination by Mr. SWETT:

Q. How far does this drift make land at Hyde Park?

A. I think it is perfectly plain that it is all drift from over north of Evanston avenue; six miles and a half from the shore the drift was made.

Q. Then the effect of this from the beginning was to make land?

A. The making of piers along the lake shore catches the drift as it comes down the lake; the current of Lake Michigan is south and west, except on the north and east shores; there is a whirlpool around the west; this appears by the fact that a vessel load of lumber which was wrecked off Evanston—the boys in Hyde Park get all the lumber, and when a man gets washed off he comes down there.

Q. How far is this pier that you speak of—this north-side pier; how far does it run out?

472 A. Well, I said, in my opinion—I might be mistaken about it; the end of it or terminus of it now is nearly half a mile from its first inception.

Q. How far is that pier north of this land—this 80-acre tract of land; how far is it from your better land of this 80 acres to that pier?

A. Somewhere in the neighborhood of sevens miles.

Q. Now, I understand that since that it has been digging out; how far is your house back from the margin of the lake?

A. About seven hundred feet.

Q. How long do you think it will take to dig your house up and float it away?

A. If it had not been for the Illinois Central Railroad Company I think several strips would have gone away before this.

Q. You think you would have been floated into the lake?

A. I think somebody would; in reply to that, I would say that the first time I had reason to examine the lake shore, I had a friend who lived in the second block from me, and I examined the lake shore at Racine, Wis.

Q. The Wisconsin float has nothing to do with the Illinois float?

A. It has everything to do with it in my opinion; since that time over one hundred feet——

Q. Which side of this case are you on; now, how long do you think it will take to dig out all this float to Vincenness avenue?

A. I think it will never be done, but I have a right to say, I think, from my knowledge of the facts, that south of Racine har-
473 bor, where his place is, from 100 to 125 feet—it is a year now since I first became acquainted with the reason—this house was over three hundred feet above the lake, and this place is located at the present near——

Q. It is plain what this lake has done with the land?

A. This current down the lake shore has brought this from Racine to the north side of the Chicago river, and made about 100 acres there; and that 100 acres has filled in twenty feet every single year on that shore; and every foot in width makes about three or four cubic yards that had to come from somewhere; and that 120 acres north there is about 1,000 cubic yards.

Q. Where did that float come from?

A. It came from up the lake shore; and the first long pier catches it and stops it, and it lodges there; that material used to come down the lake shore; and one storm used to wash out the lake shore, and another storm, coming from a little different direction, would land the same material and wash it up, and it would stay there; that is the way it was done, in my opinion.

Q. How much is there of this material?

A. About three or—O, I don't know.

Q. How long is the shore of this lake?

A. About three or four hundred miles.

Q. Have you examined all the places along the lake shore?

A. I have not.

Q. Then this is principally your theory?

A. It is not theory; it is observation.

Q. Principally your own observation?

474 A. My observation—I discovered it. I stopped with a civil engineer, Mr. Wait. I—he crossed over.

Q. Have you examined the filling in this case?

A. No, sir.

Q. Do you know any parties who did?

A. No, sir; I don't.

Q. Do you know Mr. Walsh?

A. I know Judge Dunlevy.

Q. Do you know Mr. Walsh?

A. John R. Walsh?

Q. Yes.

A. Yes, sir.

Q. How long have you known him?

A. Twenty years or more.

Q. Intimately?

A. Quite intimately.

Q. You have been associated with him as a banker?

A. We were once directors in the same bank.

Q. How long?

A. Five years.

Q. And kept these funds there—these park funds?

Counsel for plaintiff objected to the question.

The COURT: They have a right to show the relation of the witness to the parties in the suit.

Q. What are your relations with Mr. Walsh?

A. Very pleasant; somewhat intimate.

Q. How long have you been associated with Mr. Walsh as a banker?

A. We are not associated now.

Q. Did you, while you were associated with him, keep these funds—these park funds?

Counsel for plaintiff objected to the question as immaterial and not proper cross-examination.

The COURT: I think it is a little remote myself, but he may answer the question.

A. The cashier of the bank was the treasurer of the South Park Commissioners; and while he was treasurer of the commis-
475 sioner- he kept the funds in that bank.

Q. And you were a director?

A. I was a director.

Q. Has this suit been discussed down in Hyde Park with reference to the verdict having any bearing on them? Have you not talked yourself upon the matter?

A. Yes, sir; I have.

Q. Have you talked with the citizens of Hyde Park?

A. I have talked with some people about it—about the value of this land.

Q. You have been talking with people about it, and talked about the effect a large verdict would have?

A. Yes, sir; I have talked about it—I have talked about it in 1869, when I was one of the commissioners in 1869 to appraise on this land, and I did appraise some of it.

Q. Did you help make an appraisement of any land outside of the park?

A. I don't think I did.

Q. Then you have been discussing this question, the effect of it, ever since 1869?

A. Well, I told the facts in 1869, and 1870 I was appointed one of the commissioners to appraise this land to ascertain what this land was worth.

Q. Have you ever argued any condemnation suit in this case?

A. I have never argued anybody's suits.

Q. Which side are you on?

A. I am on either side.

Q. You are strictly indifferent?

476 A. Indifferent.

Q. Whose side were you on when in Lovell's brigade here?

A. I was on your side.

Q. Answer the question; then you think you were on our side of this case?

A. If I am to express my opinion I am willing the owner of that land should get all he could sell it for and no more, but in my mind I bought land at that time—better land than this—for less than I priced this land.

Q. What land did you buy?

A. Seventy-five acres at Grand Crossing.

Q. All as low as this?

A. All as low as this.

Q. As low in location?

A. With reference to the lake shore?

Q. Yes.

A. No, sir.

Q. How high is the highest point on the lake for half a mile along through there?

A. On Vincennes avenue I should say it was twenty feet.

Q. How far is that back from the lake?

A. A mile and a half or two miles.

Q. It takes a mile and a half to make a raise of twenty feet, a raise from the dead level?

A. And the land about the Oakland station is six feet above the level.

Q. Take the town of Hyde Park. What would be its mountains and what would be its valleys?

A. The only mountains there or anything that looks like a hill are some of the drifts of sand on the lake shore.

Q. How high are they?

A. Some of them twenty-five feet just south of this sand.

Q. What other mountains are there in Hyde Park?

A. Don't call these mountains.

477 Q. What other little hills are there?

A. I don't call anything hills.

Q. You don't call them hills?

[A.] I do not.

Q. Is not Hyde Park just as flat as a pancake, to use a common expression?

A. Stony Island is a very sharp pitch.

Q. How high is Stony Island above the lake?

A. I don't speak from the record; in my opinion it is twenty-five feet.

Q. Taking the body of Hyde Park, how high are its highest hills and mountains?

A. Twenty or thirty feet at the highest point.

Q. And the rest of it is a dead level—flat?

A. A level country; yes, sir.

Q. Now, south of Hyde Park, don't it get more so until you get down to South Chicago? Does it not get a great deal lower?

A. South Chicago I call Hyde Park.

Q. Then you include that in Hyde Park?

Q. A mile south?
A. Well, perhaps it is.
Q. Keep within that limit I have given you—half a mile long and a quarter of a mile wide. Tell me what sale you made there, or helped make?
A. I didn't make any sales there.
Q. Take a half mile from that line going from the center of the section. Confine yourself to 1870. Did you make any sales there?
A. Not myself; I helped.
Q. In 1870?
A. I don't recollect whether it was in 1870 or not?
Q. Then you didn't make any sales there that you know of within a half a mile?
A. I don't recollect.
530 Q. Did you make sales right north here, within three blocks of this and four blocks west, or half a mile west—now, don't go outside; did you make any sales within two blocks of 59th St. and half a mile west.
A. I don't remember of making sales there in 1870. I don't know of sales made in 1870, but I made a great many sales in that country.
Q. How far is Hyde Park? How long—16 miles, ain't it?
Mr. THOMPSON: No; 12 miles.
Mr. DUNLEVY: So, when you said you know of sales—you made sales—they were all the south side?
A. The sales in the vicinity of the park.
Q. What do you call the vicinity—do you mean with- a mile?
A. Yes, sir; within a mile. Over half a mile—from half a mile to a mile.
Q. Did you make any sales within a mile of that park?
A. No, I didn't make any sales at the prices they asked for the land.
Q. Prices very high?
A. They asked from 12 to 15 hundred dollars an acre and I couldn't make any sales.
Q. Do you know of any land down there that they asked
531 fifteen hundred, or even 12 hundred, dollars for?

Counsel for the defendant objected to the question.

Q. You have a minute there of all the sales you know of?
A. No, sir; I have a minute of some sales.
Q. That you know of?
A. Yes, sir.
Q. If there is any that you know of on this map I wish you would put them down on that map now.
Q. I know of all the sales that you made.
Q. That you helped to make?
A. No, sir, not that I made. I did not say that I made any sales within half a mile of the park.
Q. Did you within a mile of this land in 1870.
A. I don't recollect.

Q. Where is that Oglesby piece you speak of? Give the section.
A. It is near the cemetery there.
Q. Give the section, township, range, and point it out on the map.
A. I think it is section 23 or 24.
Q. Have you any doubt about it?

Mr. THOMPSON: That was Wait & Bowen's subdivision, about a half a mile north of the cemetery, on the Illinois Central R. R.
532 Now can you locate it?

Mr. DUNLEVY: Was it not Wait — Bowen's subdivision that was the division in 1870—Robinson, Wait & Bowen's.
A. Yes, in Wait & Bowen's subdivision.
Q. Now, you may state when the sale was made. Give the exact date from that memorandum in your hand there.
A. I think it was in 1871.
Q. Have you a memorandum of it?
A. No, not of that particular sale.
Q. If you tell me the purchaser perhaps I can help you.
A. I helped make the sale.
Q. But who bought it of him? Did you sell it to him?
A. I think it was O. R. Keith. Then I helped to make another sale for him south of 55th street and the boulevard.
Q. Now, if it was not in 1870 don't answer.
A. I don't think it was in 1870. I don't say I made a great many sales directly bordering on this park, and I made a great many sales outside, and from my judgment other sales I knew of and other sales made to other parties, and I therefore based my judgment on that fact, and there is no use to ask me any questions about that, for I don't recollect any sales I made in 1870.
533 Q. You mean everything south of the river down to the Indiana line. All those sales you made included everything on the south side?
A. It includes every sale I made on the south side. I have formed my judgment on sales made near to this land and similar to this land.
Q. Now you say of sales made within a mile of this.
A. Of sales made in 1870 I don't recollect at all.
Q. Now, Mr. Philpot, you may say if you know of a sale of a particular piece of property within half a mile of there?
A. In 1870? Sold a man by the name of Boyington; sold two acres on Indiana boulevard, and in 1870 an old piece that Le Moine sold in 1870, and another to H. O. Stone sold in 1870. I didn't make those sales.
Q. Whereabouts were they?
A. The Stone land was N. E. of this tract of land.
Q. Where was the Le Moine piece?
A. That was 50 acres near 55th St.
Q. In the park, was it not? I didn't ask you in the park—respecting any land in the park.
A. Some of it just south abutting on the park. Mr. Wil-
534 loughby bought a piece of land, I think, in 1870.

Mr. THOMPSON: Don't you know that he bought that land in 1878?

A. He bought some down in Stern and Clem's subdivision.

Q. I ask you for outside of park; the H. O. Stone piece and the Le Moine piece entered into your judgment of sales upon which you based your judgment?

A. A small part of it; a very small part.

Q. In forming your opinion have you been taking in the values of land outside, or have you been taking what the park commissioners gave for land outside?

A. I take all circumstances together and form my opinion.

Q. You didn't help the park commissioners buy that?

A. I didn't help them buy it. I kept myself posted. I made a specialty of sales outside of the park, and I kept myself posted as to sales.

Q. Where did you get the opinion from which you made that memorandum; who told you about the Le Moine sale lately?

A. I obtained the information of Mr. Fuller, the park commissioner, within a few days as to where I get the information from.

535 Q. That you put down in the memorandum?

A. Well, I got some information from Mr. Fuller.

Q. You say that the park excitement or the park talk—bringing up the subject of the park—had a tendency to raise values in that neighborhood?

A. Yes, sir.

Q. When did that begin—not until 1869, or before?

A. I think it was in 1869, sir.

Q. Was not the park act passed in 1867?

A. In 1868 park agitation, but not for this particular park.

Q. Near this neighborhood?

A. Yes; and north.

Q. And in the vicinity?

A. Yes, sir.

Q. That law was passed in 1867 and voted upon in 1868?

A. I think so.

Q. A great deal of excitement about the land in the neighborhood of where the park was?

A. There was.

Q. And that helped to raise prices considerable?

A. Yes, sir.

Q. What effect did the advance of prices have upon the
536 land in that vicinity; there was not a general raise in land in Cook county in that vicinity?

A. In 1868, 1869, and 1870 there was a good deal of excitement.

Q. Prices advanced very rapidly?

A. Prices advanced, but not so much from 1868 to 1870 as from 1870 to 1872.

Q. Did that raise in that time I am asking about?

A. Yes; considerably.

Q. What effect did that raise in price have with reference to

bringing this land into the market in this neighborhood ; and these railroad facilities, had that anything to do [with] it ?

A. Had its influence.

Q. Was there a demand in 1868 in the first part of the bill ?

A. As I said, there was considerable excitement in 1868, 1869, and 1870.

Q. Now you have given the value of this land with reference to the park. What proportion of the increase of price you contribute to the value of this do you attribute the general rise of 1869 and 1870 ?

A. I don't understand your question.

Q. You said that it would not be worth more than half
537 without the value of the park added to it. How did the general rise affect this land ?

A. It had the same effect upon this land as upon other land around it.

Q. How much per cent. did it increase this value from the latter part of '68 to 1869 ?

A. Perhaps the agitation from 1868 to 1869, during the first bill, may have advanced it fifty per cent. ; maybe 76, and maybe 100 per cent.

Q. The first park did ?

A. Yes, sir.

Q. And the second park advanced it how much more ?

A. Perhaps as much more.

Q. Another 100 per cent.

A. Yes, sir.

Redirect examination by Mr. FULLER:

Q. You stated you have subdivided acre property ?

A. Yes, sir.

Q. Is there a regular rule for buying up acre property and selling it by lots in subdividing as to what the receipt should be by the lot ? How much the gross receipts if you sold by the lot ?

A. It ought to be double.

538 Q. Why ?

[A.] Because the expense of the subdivision, the increase of taxation, the expense of selling, and all that sort of thing, you can't make any money unless you get 100 per cent. over the price you paid for the acre property.

Q. In that you include the interest on the investment ?

A. The interest on the investment and all considered.

Q. You were acquainted in 1870 with the fact that the South Park Commissioners had made some purchase in the park ?

A. Yes, sir.

Q. And made purchases within this east park ?

A. Yes, sir.

Q. The purchase from Boyington to which you refer ?

A. Yes, sir.

Q. And Le Moyne ?

Counsel for the defendant objected to the question.

Q. You know about this purchase in 1870?

A. Certainly I did, and I frequently went to you to refresh my memory about these things.

Q. Look on this map and point out, for instance, where
539 was the Le Moine piece.

A. At the time of the sales that were made down there there were no sales I didn't know about, but of course it is so long they have escaped my memory. 50 acres of the Le Moine piece was just next to 55th St.

Q. That is 56th St. on this map at the extreme end of this park?

A. Yes, sir.

Q. Further north than East Park?

A. Yes, sir.

Q. Now, the Boyington acres you speak of you, say that was on Stony Island Ave.?

A. Yes, sir; a couple of acres on Stony Island avenue.

Counsel for the defendant objected to the question as being examination-in-chief, which objection was sustained by the court.

Q. H. O. Stone—that was 30 acres N. E. of this tract there?

[A.] It is S. E. of 67th street.

Q. S. E.?

A. Yes, sir; of 67th street.

Recross-examination by Mr. THOMPSON:

Q. Mr. Philpot, when did you hear about the Stone sale?

A. At the time it was made.

Q. Who told you?

540 A. I don't recollect now. I kept posted as to all sales that were made around there, because I was interested in land around there.

Q. Did you not consider that that sale would have a beating on the sale?

Counsel for the plaintiff objected to the question as not recross-examination.

The COURT: Go on for the present.

Mr. THOMPSON: You mean to say that you knew of the purchase by the South Park Commissioners of this J. V. Le Moine piece at the time?

A. I think so, sir.

Q. Was it condemned or purchased?

A. I don't recollect.

Q. Then did you remember the price at which it was purchased?

A. I did at the time.

Q. You knew at the time as to the price paid for it?

A. I think so, for I used to keed myself posted as to the sales.

Q. What makes you think now that at that time you knew that price?

A. Because there was no money sales made down there at that time that I didn't know of.

Q. That's all?

[A.] That is one of the reasons.

541 Q. And don't you think you remember some of the condemnation prices as well?

A. Some of them.

Q. Don't you think you remember the condemnation price for which Cook land was sold?

Counsel for the plaintiff- objected to the question as not proper recross-examination.

A. I could not say now, sir.

Q. When did you fix your price on the land in question to which you have testified?

A. When did I fix my price?

Q. Yes.

A. On this land?

Q. Yes.

A. I am testifying as to the value of land in 1870, ain't I?

Q. When did you arrive at that opinion?

A. Why, my opinion was fixed at that time as to the value of the land.

Q. Now, you are simply giving us what you remember as your opinion of the value of the land at that time; is that it?

A. My opinion is based now upon what I know the land was selling for at that time and what I had for sale.

Q. Did you at that time examine this land and have a

542 fixed opinion as to its value?

A. I don't think I examined this land at that time with regard to fixing a value upon it, but I judged, and I had other land for sale through there, and I knew of other sales of property, and based my judgment on prices asked for property at that time, and what it was sold for—similar property all around it.

Q. Did you see this Le Moine tract, and what you have been informed the park commissioners paid for it as an element of that value? Did you use it as an element?

A. That is a very small item in fixing the basis of my valuation.

EDWIN P. GOOD was then called a- a witness on behalf of the defendant, and, being first duly sworn, testified as follows:

Direct examination by Mr. GREEN:

Q. What is your name?

A. Edwin P. Good.

Q. What [is] your business?

A. At present, in abstract office.

Q. Employed by whom?

A. By Haddock, Ballet, and Reickards.

Mr. DUNLEVY: They are abstract men; that is, the firm?

543 A. Yes, sir.

Mr. GREEN: In whose employ was you previous to the great fire in Chicago?

A. Jones & Sellars'.

Q. What book is that you hold in your hand?

A. That is a book of original entry.

Q. What are the original entries established, and what are the original entries of?

A. Deeds, mortgages, trust deeds, etc., that were filed for record in the recorder's office.

Q. In what county?

A. In Cook county.

Q. Will you see in that book if you can find a memorandum of a deed from Hoit to the South Park Commissioners? Is there a memorandum there of that deed?

A. There are two deeds.

Q. Take the W. H. Hoit, the second one, I think, on that book.

A. Yes, sir; there is a deed from W. H. Hoit and wife to the South Park Commissioners.

Q. What is the date of the deed as it appears on that book?

A. March 27th, 1871.

Q. When was the date of record?

A. Recorded March 30th, 1871.

Q. What was the consideration?

544 A. $5,945.

Q. Was the description there, or what was the description in that deed? Is the description there?

A. Yes, sir.

Mr. THOMPSON: What kind of a deed was it?

A. A warranty deed.

Mr. GREEN: Read the description.

A. "Hence 1,158 and $\frac{3}{10}$ths feet north of the S. W. quarter of the E. half of the N. E. fractional quarter of 24, 38, 14; thence N. 510 feet; thence S. E. 565 ft.; thence W. 407 feet to the place of beginning, containing 2 and three hundred and eighty-three one-thousandths acres."

Mr. THOMPSON: Does that read "more or less;" have you got that there?

A. No, sir; also "commencing 65 and $\frac{1}{2}$ feet east of the S. E. corner of the above described tract; thence N. E. at regular angles with the N. E. line of the above described 310 feet to Lake Michigan; thence S. E. along the shore 230 feet; thence west 371 and $\frac{1}{2}$ feet to the place of beginning, containing 82 one-hundredths acres; also that part of the side east half of the N. E. fractional quarter, sec. 24, N. of the tract conveyed by J. E. L. Fraser to the So. Park

545 Commissioners, one-tenth of an acre."

Cross-examination by Mr. THOMPSON:

Q. Does your book show if that deed would have the words "more or less?"

A. No, sir; it would not.

WILLIAM L. PIERCE was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct examination by Mr. GREEN:

Q. What is your name?
A. William L. Pierce.
Q. What is your business?
A. Real estate business, buying and selling real estate and raising loans.
Q. How long have you been in that business?
A. About 16 years.
Q. Where?
A. In Chicago.
Q. Where do you live?
A. I live at Hyde Park.
Q. How long have you lived at Hyde Park?
A. About 25 years.
Q. Since you have been in the real estate business have you ever dealt in Hyde Park property?
A. Yes, sir; largely.
Q. How extensively?
546 A. I have resided there as well as my partner, and we have made rather a specialty of Hyde Park property.
Q. Have you, through your family, had any interest in any Hyde Park property?
A. Yes, sir; we have and have had large interests.
Q. Whose family?
A. My own individual family.
Q. Your father's?
A. Father's family.
Q. Have you had anything to do with that property?
A. Yes, sir.
Q. What?
A. Oh, the care of it.
Q. Have you, since being in business, handled any property in the vicinity of the parks and boulevards?
A. Yes, sir.
Q. Give us an idea of about how largely you have dealt in that property?
A. Well, it would be a difficult question to answer specifically; but we have property pretty largely in that neighborhood, especially south of the park.
Q. Are you acquainted with the tract of land called the Phillips tract?
A. Yes, sir; I have known it for 25 years.
547 Q. When did you first know it?
A. I was a young man living in Hyde Park.
Q. Was you ever on it as a young man?
A. Yes, sir; very often.
Q. How often.

A. Well, very frequently; having friends at Woodland, I visited them on Sunday, and generally was pointed out the tract; generally saw the property, and went over it very many times.

Q. For what purpose did you go on it as a young man?

A. Shooting ducks.

Q. Have you been on it since then?

A. Yes, sir.

Q. You know the character of the land, do you not?

A. Yes, sir; I do.

Q. Did you know the value of the land in that vicinity in 1870?

A. Yes, sir.

Q. What, in your opinion, was the fair cash market value of the west 80 acres of the Phillips tract the 27th of August, 1870?

A. The land differs so much in value that the proper answer to that question would be to divide it up—the low land and the high land.

Q. You may divide it.

A. Is it 23 or 24 acres?

548 Q. There are 26 acres.

A. 26 acres fronting on Stony Island boulevard I should consider worth from $1,000 to $1,200 an acre; the low ground between, east of that, between that and a ridge that runs in the center of the low ground, between the ridge and Stony Island, high ground, I should consider purely speculative property, and not worth to exceed one hundred dollars an acre; the ridge land that adjoins this low land on both sides of it, and having high land near the 63rd St., I should consider not worth to exceed five hundred dollars an acre.

Q. Do you know the lake shore there?

A. Yes, sir.

Q. Did you know it in 1870?

A. Yes, sir.

Q. East of this 80 in controversy is another 80?

A. Yes, sir.

Q East of that there is agreed in this case that there is an 27 acres of shore property. You know that piece?

A. Yes, sir.

Q. What, in your opinion, was the fair market value of that shore piece in 1870?

A. That will have to be divided again, as very little of it
549 was what would be considered high land. There used to be a little house, if I remember rightly, occupied by fishermen, who used to dry their nets on the sand, at least we used to see it as boys, and there was a narrow ridge or shore piece off on the north running on lake shore, I think. I should estimate between 8 and ten acres of property here, the highest part of it out of water, out of the lake, and out of the swamp. I should consider that property worth, at a very high figure, $200 an acre; and swamp land, water land, worth more than $75 to $100 an acre.

Q. Back of this ridge?

The COURT: What did you say the high part was worth?

A. $200 an acre.

Mr. GREEN: What was back of this ridge there that you put at $75 an acre?

A. Water, muck, and mud.

Q. Well, was the land there, as you observed, under the water most of the time?

A. Yes, sir; most of the time.

Q. How high was this sand ridge on the shore from the level of the lake?

A. I should judge from three to four feet—about four feet, I
550 should guess, in walking. I fixed that elevation from this fact, because in walking along the shore a person's head would be about the level of the nearest water adjacent, and there was a shelving there, and with a little stooping—from the whole face or topography of the country in those days it required a little stooping along there.

Q. In 1870 what was the condition of the neighborhood there—the neighborhood on the west 80—with reference to improvements?

A. There was nothing on it; no house, except the one mentioned, on the west 80. None on it.

Q. Were there any macadam roads in that neighborhood at that time?

A. No, sir; nothing but dirt.

Q. Any water pipes?

A. Not that I am aware of.

Q. Sewerage?

A. No sewerage, except ditches.

Q. Any street lights?

A. No lights.

Q. How was it with reference to the neighborhood here? Take the land west of the 80 there from 59th street to 63rd street, to the railroad there?

A. From viewing it I think some houses on the hill back on 63rd street. I don't remember any in 1870, but no more; *they*
551 may possibly be one or two more.

Q. How is it to-day?

A. Thickly settled.

Q. I mean on this piece?

A. No houses there at all.

Q. Up to 1880 this land—this whole neighborhood—was practically in the same condition, vacant and unoccupied?

A. It was.

Q. How was it along what is now called Midway Pleasance in 1870, as far as the improvements were concerned?

A. Uninhabited; no houses.

Q. How is it substantially to-day?

A. About the same.

Q. Taking the West Park, Mr. Pierce, how was it around there in 1870?

A. The west part of this 80?

Q. No; the West Park.

A. About the same.

Q. What change has there been in the condition of affairs around there up to the present time?

A. The park probably has improved.

Q. I mean outside of it?

A. Adjacent to?

Q. Say 1870 and 1880?

A. Whatever improvements there are has been done in that time.

Q. From 1870 to 1880?

A. From 1870 to 1880. Yes, sir.

552 Q. How many buildings were there right around the West Park?

A. The south part of the West Park—the boulevard part of the West Park.

Q. Taking the park itself first?

A. No improvements outside the park.

Q. Taking the Grand boulevard, that runs from the park down to 75th street, what changes have there been in that part from 1870 to 1880?

A. Very little.

Q. About how much in that time has there been more buildings torne down or put up?

A. There have been several buildings left half finished, but I don't know of any being torne down and no new ones of consequence put up.

Q. Do you remember when the park act was passed?

A. Yes, sir.

Q. Do you remember of a movement of real estate there prior to the passage of the park act?

A. Yes, sir.

Q. Do you remember the agitation with reference to a park before the lines were fixed?

A. I do.

Q. What effect did the agitation anticipating of the park have on the valuation of land in that vicinity?

553 A. Before the bill was presented?

Q. Before the bill went to the Legislature?

A. There was an excitement, but no new general movement at that time. The movement was greater after the limits were defined.

Q. Was there an advance there of land in that vicinity on account of the agitation of the park scheme?

A. There naturally was.

Q. In giving your estimate of the value of land in controversy on the 27th of August, 1870, have you taken into consideration that element?

A. I think so.

Q. What, in your opinion, leaving out the valuation of the land by reason of the anticipation of the park, was the valuation of the land in 1870?

Mr. Thompson, counsel for defendant, objected to the question,

which objection was overruled by the court, to which ruling of the court counsel for defendant then and there excepted.

A. It would have no real value, but would be purely speculative.

Q. Suppose that in 1870 there was no park anticipated,
554 and none there, what, in your opinion, was the fair market value of the property there at that time, if you have got an opinion as to the price?

Counsel for defendant objected to the question.

A. I should not like to buy that—you mean the 80 acres taken as a whole?

Q. Taken as a whole.

A. I should not like——

Mr. THOMPSON: Never mind what you would like.

A. I should not consider it worth that for speculative purposes. That is all the value I thought it had independent of park; I should not like to take it at over $100 an acre right through.

The COURT: When was this?

A. In 1870; taking the entire 80 acres without the park.

Q. Was this property in 1870 suitable for subdivision?

A. A very little of it, sir.

Q. What portion of it?

A. Stony Island.

Q. Why was not land btween the two ridges suitable for subdivision?

A. It would have been very expensive.

Q. Why?

A. On account of the filling it would be necessarily expensive.

Q. Because it was too low?

555 A. Too low, and required to be filled up.

Q. Have you any experience in subdividing or selling land there for yourself or others?

A. I have.

Q. Where land is bought by the acre and subdivided, from your experience, what would you sell. What would lots be sold at in lots; for what advance in order to make a fair profit on the investment?

A. We certainly expect from over two to three hundred per cent.

Q. Why?

A. The expense of subdividing or laying it out would be expensive.

Q. Is the loss of lands making streets—whatever it is taken out.?

A. Yes, sir; that has got to be taken out; the whole place has to be filled up, and then there would be a great many lots that would be expensive, and calculate- to lower the investment price.

Q. Suppose there was no park or prospect of a park near this land in 1870, and it had been subdivided, in your opinion, would these lots have made a rapid sale?

A. I should consider it would have been very difficult to
556 have made a popular subdivision of it to make the lots sell with any quickness.

Cross-examination by Mr. THOMPSON:

Q. Did I understand you correctly that the difference between buying property by the acre and buying it by the lot is between two and three hundred per cent.?

A. I did make that statement; but I should have qualified it.

Q. What qualification do you desire to make?

A. It takes in different locations—there is very often acre property that has been subdivided all around this, and then a man can calculate the expenses of the subdivision of land specially taken in the situation that this land is.

Q. That would be from 200 to 300 per cent. difference?

A. I should not have liked to have undertaken it for less than that.

Q. You base your judgment on sales that were made before?

A. Generally they were made before.

Q. I mean in this particular case—from 200 to 400 per cent. then?

A. Yes, sir.

Q. And that is the basis of your judgment; the basis that you have been giving your testimony on?

557 A. That is the best of my opinion on that ground.

Q. That is the best of your judgment?

A. So far as that goes; yes, sir.

Q. You testified in this case before?

A. I did.

Q. How many times have you testified in condemnation cases like this? I don't mean in park cases, but in cases like this.

A. I have been called on frequently in my experience.

Q. What do you mean by frequently?

A. It is very difficult to say; there is hardly a concern of any prominence who have not been called upon.

Q. Never mind dodging it; stand right up and give an answer.

A. How many times?

Q. Yes, sir.

A. I keep no books of that.

Q. Give us your best judgment.

A. I should think in the neighborhood of seventy-five times, in the 16 or 17 years that I have been in business.

Q. How many times have you been called to testify in behalf of the owner instead of the parties taking the land?

A. Quite often.

Q. How many times have you done it within the last year?

A. I have not done but little.

558 Q. How many times have you testified within the last year on behalf of the owner?

A. I don't remember.

Q. Have you done it once?

A. I may have.

Q. You possibly don't know?

A. I possibly cannot testify.

Q. Have you ever testified the last year in a case on behalf of a friend as against the owner in a railroad case?

A. If you desire an answer as to whether I have generally testified——

Q. I desire an answer to this question.

A. I could not have answered positively regarding it before the last trial; I cannot now.

Q. Do you remember a single case in which you have ever testified in behalf of the owners?

A. There must have been a great many.

Q. Do you remember testifying in a single case?

A. I don't remember a distinct case.

Q. Now, Mr. Pierce, did you know of any sales, except what you have told of, at the time of the last trial anywhere in this vicinity in 1870?

A. No; I did not testify at that time that I had made any personal sales or knew of any.

Q. And that you knew of any?

559 A. Except what I was advised of.

Q. Did you testify that you knew of any?

A. No; I think I testified I had not been told.

Q. Was you not asked that question; did you not when you were called upon to testify in this same case on the other hearing—were you not asked by the person who called on you whether you did not know of any sale that had been made in 1870?

A. I don't remember whether I did or did not regarding that.

Q. I will ask you the fact; did you know of any sales there, excepting those that you told of at the time you were called upon to testify before?

A. No; I did not.

Redirect examination by Mr. GREEN:

Q. Was you ever asked by owners of property to testify in such a case as this?

A. Not to my recollection.

JAMES WALSH was then called as a witness on behalf of the defendant, and, being first duly sworn, testified as follows:

Direct examination by Mr. GREEN:

560 Q. What is your name?

[A.] James Walsh.

Q. What is your bu*i*s-ness?

A. Railway bu*i*s-ness.

Q. How long have you been in that bu*i*s-ness?

A. 25 years.

Q. Have you ever had any dealings in real estate in this county?

A. Yes, sir.

Q. In Hyde Park?

A. Yes, sir.

Q. As an agent or as an owner?

A. As an owner.

Q. When did you first commence to trade in Hyde Park property?

A. In 1867 or 1868.

Q. How long did your sales in Hyde Park property continue?

A. Until 1876.

Q. Mr. Walsh, did you ever own any property in what is now the East Park?

A. Yes, sir.

Q. The tract that we are considering here is a portion of the Phillips tract, represented on this map, "Defendant's Map B," in pink; where, in relation to that land, did you own the East Park?

A. Where is 63rd street? I owned south of 63rd street and running down to the lake.

561 Q. How much did you own?

A. 40 acres.

Q. When did you buy it?

A. I bought it in July, 1868.

The COURT: That is south of the 34-acre tract?

A. Yes, sir.

Q. This runs to the lake?

A. Yes, sir.

Mr. GREEN: Did this run to the lake?

A. I think a portion of it abutted on the lake, a very small piece.

Q. It was 40 acres?

A. My recollection is that a portion of it bordered on the lake.

Q. And you say you purchased it in July, 1868?

A. Yes, sir.

Q. I will now ask you what you paid for it?

Counsel for defendant objected to the question as being a question of the value in 1870.

The COURT: When did this park agitation first begin?

A. In 1869.

Mr. GREEN: We will withdraw the question for a moment. Mr. Walsh, did you know what was the value of land included in the limits of the East Park in the summer of 1870; did you have an opinion?

562 A. Yes, sir.

Q. Did you know the value of land in that vicinity in 1868?

A. Except as I valued my own and covered a fair estimate of the rise of property.

Q. Did you know at that time of the agitation of the park scheme prior to the fixing of the lines of the park—that is, as a matter of fact, do you remember of their agitating a park scheme in Hyde Park?

A. Yes, sir.

Q. What effect did the agitation of the park scheme or anticipation of a park have upon the valuation of land in that vicinity?

A. O, it enhanced the value very materially of all land.

The COURT: The anticipation?

A. Yes, sir; of all land.

Q. Before the lines were established?

A. Yes, sir.

Q. What, in your judgment, was the fair cash market value of the west 80 acres of the Phillips tract in August 1870?

A. I should say from $800 to $1,200 an acre.

Q. Now, was there any advance in that land, in your estimation, prior to the fixing of the lines of that park?

563 A. Yes, sir.

Q. Does that price that you have named include the advance in anticipation of that park?

A. Certainly.

Q. What was that land worth in 1870, Mr. Walsh?

A. You mean the land within the park boundaries?

Q. Yes, sir.

A. Well, except for the park purposes I could not think of anything it was designed for.

Q. Park or no park, what was that west 80 suitable for?

A. It ought to be sold for speculation. It could not be thought of for improving.

Q. Was it desirable residence property in 1870?

A. I think not—not in the remotest degree.

Q. Now, if there had been no park or no anticipation of a park, what, in your opinion, would have been the fair market value of that property in 1870.

Counsel for defendant objected to the question, which objection was overruled by the court, to which ruling of the court counsel for defendant then and there took exception.

564 The COURT: Exclude the influence of the park and give it all other influences.

A. From $400 to $500 an acre.

Cross-examination by Mr. THOMPSON:

Q. Mr. Walsh, your judgment down there, as I understand your testimony, was based upon those transactions you had which you have spoken of, is it not?

A. In the ownership of the land?

Q. Yes.

A. Yes, and in ascertaining other owners of property.

Q. But it was composed with reference to that transaction and your endeavor to have it—did you sell it to the park?

A. No, sir.

Q. The piece of property which you have been speaking of was a piece of property taken in the name of Sidney D. Webster?

A. Yes, sir.

Q. And subsequently sold to Charles W. Colehour?

A. Yes, sir.

Q. Do you remember the date of that sale?

A. April, 1870.

Q. April 14th, was it not?

A. April 14th. The description of it was "the undivided
565 half of the west half of the northeast quarter;" I don't know as such in the description, but I know the location.

Mr. DUNLEVY: Won't you point it out on that map before you, so the jury can see it?

Mr. THOMPSON: Do you know what the South Park Commissioners claimed with reference to that land at that time—as to what basis they should pay on at that date and the date they fixed the value?

Counsel for plaintiff- objected to the question as not proper cross-examination.

Q. Probably I should ask another question first; I was going to ask what that sale was for.

The COURT: Which sale?

Mr. THOMPSON: That sale which is in his mind upon which he fixes his judgment.

The COURT: He said he fixed his judgment from that and other things.

Mr. THOMPSON: Did that talk include the question as to what the South Park Commissioners would pay if they purchased as to the date when they would pay for it?

A. I called on Mr. Cornell, one of the park commissioners, and he said——

566 Counsel for the plaintiff- objected to what he said.

Q. He was one of the park commissioners himself. He was on the land committee for purchasing this land.

Mr. THOMPSON: I propose to prove what was the date at which they insisted the land should be valued in that park.

The COURT: He can give his answer as to the value of this land uninfluenced by the park project. He has also given his answer as to what this land would have been worth on the 27th of August if there never had been any plan of any park there. He has also given his opinion of the value of this land in 1870, influenced by the location of the park and the agitation of it. Now, that is all before the jury. Now, what is is you want to show—that he has been influenced in his judgment by something that the park commissioners said to him?

Mr. THOMPSON: He says that he formed his opinion on the transaction of handling this piece of property to which he has referred. Now, I am going to ask him what was the price which he got for that piece of ground, and I will also want to ask him what was
567 the position taken by the park as influencing his judgment in the value of the land in that park at that time, if they had any park or not.

Mr. GREEN: He didn't sell to the South Park Commissioners.

Mr. THOMPSON: Was this inquiry made while you were the owner?

Mr. FULLER: I don't understand the witness to say a word about being influenced by the sale that he made.

The COURT: He said he considered his purchase and what he learned from others.

Mr. THOMPSON: Did you mean for which you sold this land? It affected your judgment as to the value of this land in 1870; does that enter into the basis of your judgment?

A. As to the value of the land?

Q. As to the value of the land. Did the prices at which you sold this land in 1870, in fixing your present idea of value there—did that enter into your opinion?

A. No, sir.

Q. Not at all.

A. No, sir.

Q. And in no way affected your judgment as to values—what you got for that land?

A. No, sir.

568 Q. You testified before, Mr. Walsh?

[A.] ——.

Q. I will ask you whether the following questions and answers were asked and answered by you at the other trial: "Do you know of any sales or of taking the low land of this in 1870—sales for cash or usual terms?

A. No, sir.

Q. You were not connected with any?

A. No, sir.

Q. Or knew of any?

A. No, sir.

Q. Will you then state whether the information you have given to the jury was the information you held in 1870 from your knowledge of other sales in that neighborhood?

A. No, sir.

Q. Knowing it was from estimates you had of land and in trying to sell the land which you had an interest in?

A. I don't know that it would be much good for much at all—good title.

Q. Well, we will judge *we will judge* whether it was good for much. What, in your opinion, *what* that 80-acre tract worth in 1870?

569 A. I tried to sell the land, that I know; I can only base it on that.

Q. Now, I will ask you whether the sale that you made of this property in which you are interested there entered into the basis of information you have stated here as to value.

A. I don't think it did.

Q. You don't know of any other sales that did?

A. Yes, sir; I heard of other sales in the park; I think the sale made by Mr. Stone, it was in the park.

Q. But you did not say that the amount for which you sold that property was anything as the basis upon which you based your opinion. At what time did you sell that land?

A. April 14th, 1870.

Q. At what did you sell that land of 1870?

Counsel for defendant objected to the question.

Mr. GREEN: Let us first find out whether it was a sale for money or whether it was a trade.

The COURT: Was it an exchange or was it a sale?

A. It was an exchange for other property.

Mr. THOMPSON: Exchanged for property?

570 A. Yes, sir.

Q. And not a sale for money?

A. No, sir.

Mr. DUNLEVY: Part money and part property?

A. No, sir; not a dollar in money.

J. F. FOSTER was then recalled [on] behalf of the defendant, & testified as follows:

Direct examination by Mr. FULLER:

Q. I will ask you if you can give me the area of the East Park—a question I forgot to ask before?

A. As it was, when first taken by the park commissioners?

Q. Yes.

A. It was slightly over six hundred acres. I don't remember just exactly what it was. I can't tell you now.

Q. Have you examined, since you were on the stand, the lake shore a mile north of Lincoln Park?

A. I have.

Q. What distance did you examine, and when?

A. Last Sunday, from the north line of Lincoln Park to the marine hospital.

Q. How far north is the marine hospital?

A. I think, two miles north of Lincoln Park.

571 Q. Did you find, a mile north of Lincoln Park, any jetties?

A. There are a few there from Lincoln Park. There are piers and jetties at various places.

Q. Now, take the land one mile north, what effect had the jetties upon it out there?

A. There was no effect there which might be attributed *by* the jetties.

Q. Was there an effect in the way of accretions—did you discover any accretions there?

A. There have been accretions apparently over all about an eig-th of a mile south of the marine hospital, extending south perhaps a mile.

The COURT: Where was it you said the accretions were?

A. Immediately south of the marine hospital.

Mr. FULLER: One-eig-th of the mile south of the marine hospital and extending half a mile?

A. About that, I am not sure of the distance.

Q. In a general way?

A. Yes, sir.

Q. What has been done with the accretions.

A. In my opinion, the accretions——

572 Q. It is your opinion; I want your judgment of it.

A. The Government have lately built a breakwater in front of the marine hospital grounds. The breakwater is paral-el with the shore, and prevailing winds would strike that breakwater from the northeast, take it anywhere along about 35 or 40 degrees, and will produce what are called rise waves, or a wave that runs down to the breakwater, and produced what is called a scour of this breakwater; and immediately south of the point where the breakwater stops the land has been somewhat *d*eroded, and this material which has been scoured from in front of this breakwater, and immediately south, I think, is the material which further down lodges along the shore and makes an accretion.

Q. Have the jetties had anything to do with it?

A. I think nothing may be attributed to the jetties.

Q. In that area which you have given of about six hundred acres, do you know what it is—less than six hundred or over six hundred?

A. I don't remember positively whether it is just less or a little more; I have not borne that in mind.

573 Q. Take this map marked "B," giving an acre with the balance of 34 acres added as it is to-day. I am calling that 34 acres. It is not to-day.

A. The map represents the whole park area as it was in 1869, I believe. I believe that was the time the survey from which your map was made; it was the original park survey; the line of the map was put on from the original park-survey plan.

Q. Does that represent the acreage in 1869?

A. I think that is the day of the survey. It represents that park at the time that survey was made.

Q. What is the total acreage in the East and West Parks and the boulevards?

A. Between 1,100 and 1,200 acres; I don't remember exactly.

Q. Between eleven and twelve hundred, you say?

A. I think that was the original acreage.

Q. All, including the boulevards?

A. Yes, sir; that includes the boulevards.

Q. That covers the entire south park system?

A. Yes, sir; as it was at its inception.

574 Q. 1,287. Would that be too much?

A. Possibly it might be between twelve and thirteen; I have forgotten just the acreage; I am not positive.

Cross-examination by Mr. THOMPSON:

Q. You found jetties there?

A. Yes, sir; I found jetties all along on the shore at various places.

Q. Sand all around them?

A. No, sir; not all around them.

Q. Was it near the north side of it?

A. Well, of course sand was on the north side of it. They were partly filled in with water and partly in the sand.

Q. Was not the shore end of that all covered up?

A. No, sir; not all of them; some of them were.

Q. You found the jetties there, and found sand lying up against the jetties?

A. Yes, sir; there was sand up against the jetties.

Q. And still you think the jetties had not done any good?

A. I do not think there was anything there which was produced by the jetties.

Q. You say produced. You mean caught by the jetties?

A. Caught by the jetties.

575 Q. You don't think there was anything caught by the jetties?

A. I don't think there was any accretions which may be attributed to those jetties.

Q. When did you ever examine it before to see about these accretions?

A. I never examined it before north of Lincoln Park.

Q. I am speaking now—here you are telling about this side of the marine hospital. Did you ever examine it before last Sunday?

A. Not north of Lincoln Park.

Q. And that is all the examination which you made, and from which you have formed you opinion?

A. That is all.

Redirect examination by Mr. FULLER:

Q. Your opinion as engineer?

A. That is all.

The court adjourned at 1.30 p. m., December 9th, 1884.

WEDNESDAY, *Dec. 10th*, 1884.

Court met pursuant to adjournment at ten o'clock a. m.

GEORGE H. ROZET was then called as a witness on behalf of the defendants, and, being first duly sworn, testified as *as* follows:

576 Direct examination by Mr. GREEN:

Q. What is your name?

A. Geo. H. Rozet.

Q. Where do you reside?

A. Chicago.

Q. How long have you lived in this county?

A. Over twenty years.

Q. What has been your business?

A. I have been a real-estate agent since 1865.

Q. That is, buying and selling real estate for others.

A. Yes, sir.

Q. Have you dealt in real estate on your own account?

A. Yes.
Q. You have owned real estate in your own name?
A. Yes, sir.
Q. Have you ever lived in Hyde Park?
A. Two years subsequent to the fire.

At this point the witness was withdrawn for the time being.

FRANCIS B. PEABODY was then called as a witness on behalf of the defendants, and, being first duly sworn, testified as follows:

Direct examination by Mr. GREEN:

Q. What is your name?
A. Francis B. Peabody.
Q. Where do you live?
577 A. In Chicago.
Q. How long have you lived in Chicago?
A. Nearly 28 years.
Q. Continuously?
A. Continuously.
Q. That takes us back to about 1856, doesn't it?
A. That takes us back to the fall of 1856 and the spring of 1857. I came out here in 1856, and settled in 1857.
Q. What has been your business during all this time?
A. During the early portion of the time I practiced law up to perhaps 1866 or 1870; then, by the force of events, I was crowded out into the loaning of money on mortgages and the investment of securities, and that has been my exclusive business since 1867 or 1868.
Q. In the conduct of that business have you had occasion to make valuations on real estate?
A. Constantly.
Q. About how much of a business have you done during those years?
A. Well, in amounts of money, for instance——
Q. About how much real estate have you had occasion to
578 estimate in value, in just round numbers, during the time you have been in that business?
A. $40,000,000 or $50,000,000.
Q. What was the name of your firm formerly?
A. It was formerly Gallup and Peabody. You mean while I was in this business?
Q. Yes.
A. Francis B. Peabody & Co.
Q. Besides this business of valuing real estate for loans have you had any experience in buying or selling real estate during those years?
A. Not to a large extent.
Q. Have you to any extent?
A. Yes; I have.
Q. Have you ever bought any real estate on your own account?

A. I have.

Q. Are you now the owner of any real estate?

A. I am.

Q. Have you ever had any experience in valuing real estate either for loans or for purchases in the Northern Park of the village of Hyde Park?

A. Along what streets? If you will designate particularly—the village of Hyde Park is a pretty wide extent of territory.

579 Q. I will say north of 63rd, between 67th—67th street is south line of the East Park.

A. Yes; I have had occasion to ascertain values so far as it might be within that territory.

Q. Were you in 1870 acquainted with the value of land in and about what is now the east part of the South Park system? (Handing witness map.)

A. I have some knowledge and information of values there in that vicinity. (Indicating.)

Q. Are you acquainted with the tract of land called Phillips tract, extending from 59th to 63rd St., Stony Island Ave., and the lake, shown by this topographical map which is in evidence?

A. Yes; I know the land.

Q. Were you ever on that land?

A. I have been, I think, only upon one occasion upon that land, so far as I now remember. Possibly on the land itself.

Q. Have you ever been by that land except the time you were on it?

A. I have been near by it. I have not passed it at a close distance more than on one occasion when I made a special ex-

580 amination of it, and on one other occasion when I made a special examination of the land on the south, and on another occasion when I drove through that park with Col. Bowen some years ago.

Q. Are you acquainted with the topography of that land?

A. Yes, I am; that is the southwest quarter of section 13 and the piece along the shore?

Q. Yes, sir; the land involved in this case?

A. Yes; I examined its topography a year ago or thereabouts.

Q. Directing your attention to the west 80 of that tract (indicating), depicted upon this topographical map, what, in your opinion, was the fair cash market value of that land as it stood on the 27th of August, 1870?

A. I should distinguish, in valuing it, between different portions of it, some of it being high and some very low; the west front, on what I think is called Stony Island Ave., in my judgment, at the time you say, was worth about $1,200 an acre; that is the tract which seems to have been subdivided into lots.

Q. Acre lots?

A. It appears to have been subdivided into lots not far

581 from an acre each, and, according to my recollection of the topography, they are mostly on the ridge or rear part of these

lots, probably, running from points into the low ground; I do not know how many acres there are in that subdivision.

Mr. THOMPSON: 26.

Mr. GREEN: It is 40 in the one before him.

A. That is the portion I valued at about $1,200 an acre?

Mr. GREEN: Yes, sir.

A. And lying along east of that is some low marsh ground, between that and another ridge still further east, occupying I don't know how much land, but running from the south end of the tract up to, probably, the north end or nearly to it, may be further; I valued that at something — seven hundred dollars an acre.

Q. Do you mean this slough at $700 an acre?

A. I refer to the second ridge; the slough I value at $350— about $350; the second ridge, which occupies I don't know how much land, I value at about $750; I have no means of meas-
582 uring the amount of land there, either in the slough or in the ridge.

Q. That is, the standing land having front?

A. I call that $9,200, and the slough and the next ridge east, — my judgment, is about, perhaps, $350, and the ridge next east something like $700, or thereabouts.

Mr. STORRS: And that is without reference to the amount of slough or ridge land?

A. Because I do not know how much is in slough or how much in high land.

Mr. GREEN: Skipping the next ridge east, and going to the shore piece, what, in your judgment, was the fair cash market value of that shore piece on the 27th of August, 1870?

A. Of the shore piece, when I examined it, it was partially ridge and partially slough—that is, there was some high ground along the shore, running back into the slough, according to my reccollection of it. The shore piece, as near as I could form a valuation of it, I should value it at something like $350 an acre; the high part and the lower part, perhaps, $150.

Mr. GREEN: These values that you have given in all cases
583 are of the date that I have mentioned?

A. Of the date of 1870.

Q. In fixing that estimate have you taken in every element that went to make up its value as of that date?

A. Endeavored to do so.

Q. Have you had any experience in the subdivision of lands or in giving advice in reference to the subdivision of acre property?

A. Only in a single instance I have subdivided, myself, for the purpose of making sales in lots, but I have frequently advised customers.

Q. In subdividing acre property to be sold out in retail what, in your opinion, would be necessary to retail the lots out, in comparison with the purchase-price, in order for a purchaser to get a fair profit on the investment?

A. The ordinary rule, in my judgment, which should govern in such cases, is that it ought to retail, after the necessary subdivis*ed*

and platting and throwing up of streets, that is all intended to beautify and make the land attractive, and if not purchased, it ought to bring twice the wholesale price.

Q. Why?

584 A. Because of the amount of labor involved and expense involved in bringing it into that condition to sell it in small lots, because in selling property in small lots it is almost invariable that the payments are small and drag along for a great period of time, and is therefore very annoying and embarrassing to a business man, and he cannot convert the paper it bring- in small amounts. The investors don't want the paper, and he has to carry the paper; and these are some of the reasons: The amount of labor involved, the amount of expense involved, and the protracted periods through which the purchase-money is usually paid on the sales of small lots.

Q. You have to give part of your property for streets; don't you take that into consideration?

Q. If it is a sufficiently large tract to furnish more than one tier of lots you have to give something for streets and alleys, of course.

Cross-examination by Mr. THOMPSON:

Q. Did you ever buy a large tract, subdivide it, and sell it out?

585 A. The only tract I ever bought to sell out was a 20-acre tract.

Q. Did you subdivide it?

A. I had it subdivided; yes, sir.

Q. When you had it subdivided what did you do?

A. Well, I had an agent do it all for me. My former partner was jointly interested with me in the investment or speculation.

Q. Did you throw up streets?

A. In that case there were streets thrown up or laid out and dedicated.

Q. Now, was not the usual method of making subdivisions in Hyde Park simply for a man to hire a surveyor to go down there, survey it, plat it, and put it on record?

A. That was a necessary preliminary; I cannot say that nothing more was ever done.

Q. I did not ask you that. Was not that the usual method of making a subdivision in Hyde Park?

A. That was the usual method of making subdivisions.

Q. In Hyde Park in 1870 wasn't that the usual method of making subdivisions?

A. You mean not to throw up streets?

586 Q. I mean not to throw up streets.

A. I don't know.

Q. What is your judgment?

A. I haven't any.

Q. Did you ever see any subdivisions where there were no streets thrown up or graded?

Mr. STORRS: You simply threw up a street on the map?

Mr. THOMPSON: That is it. Wasn't that very commonly done?

A. I don't know, but I should not think it was.

Q. Are you not familiar enough with Hyde Park property, for instance, to know whether there are streets as shown by that map (indicating), and whether there were any in 1870; do you know whether there were any streets there?

A. I know there are some streets there.

Q. But I mean subdivision.

A. There are some streets there which I suppose were there in 1870.

Q. Now, then, going right back to the question, are there not subdivisions in Hyde Park existing to-day on paper and in the recorder's office, made prior to 1870, where there is no subdivision?

A. I have no doubt this is such subdivision.

587 Q. Now, then, is it very expensive in making that kind of of a subdivision?

A. No; he would hire a surveyor, and he would go down with his chain and his man and drive some stakes; that is not very expensive.

Q. That is not very expensive, is it?

A. No, sir.

Q. It only costs a few dollars?

A. That is all.

Q. Now, suppose you had here in this case, all ready for you, a macadamized street in front of the property—supposing you already had a macadamized street (indicating) in front of your property, and and you had already thrown up a street-box drain and ditches on the south side of your property; also thrown up a street and ditches on the north line of your property, and a street running east and west through the center of your property and ditches, as shown by this map (indicating), and another street here (indicating), and ditches as shown by that map already made, would that have been very expensive so far as the subdividing of it was concerned?

A. The tract is half a mile long?

588 Q. Yes, it is a half a mile long. Take this 80 acres right here. (Indicating.) That would not be very expensive, would it?

A. To do what?

Q. To subdivide it. If you had that basis to start on, it would not be very expensive, would it?

A. To subdivide it; it would not be very expensive to subdivide.

Q. Now, suppose you had it already platted and subdivided in the record, you would not make it over?

A. That depends upon whether I would like the way it was laid out.

Q. Now, this expense that you speak of, it is simply in retailing it that you have to wait for payments?

A. The expense is in order to make it more attractive to the purchasers. You must make it attractive if it is for the purpose of investment, but if it is for the purpose of speculation, where no one goes to see it, it is rather immaterial; but to sell it for the best price, you must make it attractive.

Q. How close is this to the depot?

A. The south end of it is a little less than a quarter of a mile, and north end a little less than a half a mile. I am not certain
589 as to where the railroad runs. Yes, the south end is a little less than a quarter of a mile, and the north end of it is half a mile.

The COURT: Mr. Thompson, you speak of making subdivision on paper without any improvements. What demand is there, if any, for lots which are simply laid out in that way on paper. Do they sell readily?

WITNESS: Do you ask me?

The COURT: Yes, sir; what the expense was as to the market in 1870. What demand was there for lots that were simply indicated upon a map in a low place?

A. In a marsh?

The COURT: Such as that was.

A. A portion of this is on a ridge, and a portion is on a slough. Of course, the portion in the slough would not be in demand, except for purposes of speculation. If some one had any reason to think it was going to be higher, and they could sell it for more than they paid for it they would buy it, but the ridge land is suitable for dwelling-houses and homes. It has a street in front of it—a
590 good street—and can be made into pleasant dwelling-house property.

Mr. THOMPSON: Now, Mr. Peabody, I will ask you, looking at this map you will notice there that this ridge piece is the 80-acre tract in question.

A. I see the piece you indicate. My eyes are not good for colors, but I see that. (Indicating.) That appears to be a subdivision there.

Q. No; this line here, taking from here to Stony Island Ave. (Indicating.)

A. The whole is an 80.

Q. As subdivided upon this map it is a 40; do you notice it subdivides half of the eighty?

A. I don't know.

Q. But I mean upon this map?

A. It does not appear to be a 40. The east line of the street may include the 40.

Q. The east line of the street includes the 40?

A. Yes.

Q. Now, I will ask you, taking that subdivision as it existed there, what in your judgment were these lots worth, having a depth of 561 feet with a frontage of 105 feet on Stony Island Ave.; what were they worth in 1870?

591 A. Are they fairly represented on that map as to the property embraced in the ridge, and the part in the slough.

Objected to; overruled; to which ruling of the court the plaintiff by its counsel then and there duly excepted.

Mr. THOMPSON: The street would be on the center of this 80, and

these lots would start from here (indicating) and run to the 80, a portion of it being high and running back to the low ground.

A. Where is the east line of the 80?

Q. It is here. (Indicating.) The center line of the 80 is there. (Indicating.) Now, starting from Stony Island Ave., with a lot running half way across the 80 to the center of the low land, what, in your judgment, would those lots be worth per front foot on Stony Island Ave.? What would they have been worth in 1870?

The COURT: What is the size of the lots?

Mr. THOMPSON: About 500 feet deep.

The COURT: About 500 feet deep?

Mr. THOMPSON: Yes, sir.

Q. Take these lots running to the center of 80, and what would they be worth per front foot on Stony Island Ave.?

Mr. GREEN: We enter an exception.

592 Mr. THOMPSON: For any purpose of speculation in 1870—speculation or any other purpose?

Mr. GREEN: That we object to.

The COURT: What is the actual value? Of course, if a man wanted to speculate he would pay his money for it. There is a difference between a mere speculative value, such as men indulge in at Chicago and elsewhere, and a class of men who buy and sell largely among themselves of property worth little or nothing for residence purposes, but in anticipation of a great rise in the real estate market. You cannot estimate this value that way. The question is, what did it represent in money at that time—What could he have realized for it?

Mr. THOMPSON: What could he have sold it for at that time?

The COURT: Not on mere margins.

Mr. THOMPSON: I mean in the usual way—say, one-third down and the balance in 1, 2, or 3 years, bearing a rate of interest that those sales bore in 1870.

The COURT: That a man expected to pay for it?

Mr. THOMPSON: Yes, sir.

The COURT (to witness): You can answer.

Mr. GREEN: You had better ask whether there had been any sold at all.

593 WITNESS: Mr. Reporter, please read the question.

Q. What, in your judgment, could those lots have been sold for per front foot on Stony Island Ave. August, 1870.

Mr. GREEN: Running back into the slough.

Mr. THOMPSON: He understands that.

Mr. GREEN: But I want to understand it—whether you mean the old subdivision or the new one.

Mr. THOMPSON: They were about 561 feet deep.

WITNESS: I understand you to mean lots fronting west on Stony Island Ave., and extending east to the east line of the 40?

Q. Correct.

A. Yes, sir.

Q. And don't it get a little lower the further south you go?

A. No, sir; Stony Island is further south than South Chicago, and then Pullman is further south, and that is high.

Q. How high is Pullman above the lake?

A. Ten feet.

Q. Ten feet above the water?

A. Twelve feet.

Q. How many inhabitants down there?

A. Ten thousand.

Q. How long have they been coming there?

A. O, coming there about two years and a half.

Q. How many in South Chicago?

A. Ten or twelve thousand.

Q. How long have they been coming?

A. Five years.

478 Q. How many at Grand Crossing?

A. One thousand. I am giving a rough guess at this.

Q. How many are there at Grand Crossing?

A. More than a thousand.

Q. How high is Grand Crossing above the lake? Right in the center of Grand Crossing, how high is it above the lake?

A. I am trying to remember what I heard said on the subject.

Q. Well, how high is it, to your knowledge, so far as you know on the subject?

A. Well, I suppose, it is about four or five feet. The water will run towards the lake.

Q. Is not that above what is called city datum?

A. Well, the water in this lake is sometimes two or three feet higher than at other times.

Q. Is not that two or three feet above the city datum?

A. I believe the city datum is arbitrary. The city put the level of the lake in a certain condition of water.

Q. Will you answer the question?

A. I believe I cannot be mistaken.

Q. How far is it from this land down to South Chicago?

A. This land is in section twenty-three, is it not?

Mr. GREEN: Section thirteen.

A. That is correct; thirteen.

Mr. SWETT: How far is it down to South Chicago?

A. I can't tell, but I can figure it out.

Q. About how far?

A. It is about five miles; perhaps six miles.

Q. How far is it to Pullman?

A. Seven or eight miles in a straight line.

479 Q. How far is it to Grand Crossing?

A. From 67th street to 75th street is a mile, and 77th street goes straight through Grand Crossing, and is a mile further west—the west point of this land.

Q. How far is Grand Crossing from this land?

A. About a mile and a half.

Q. How far is it to Englewood; how many people are there in the village of Hyde Park; how many population have you got when you brag of it?

A. I believe there is about 50,000 or 60,000, I believe.

Q. I will ask you about Grand Crossing. What sort of improvements have they there on this low land?

A. Well, there are some very good improvements.

Q. Well, what kind of buildings are they?

A. Well, mostly wooden buildings standing on posts. The water stands underneath the houses—the biggest part of it.

Q. Is there a watch factory there?

A. No, sir; there was a building there.

Q. Is there a sewing-machine factory there?

A. No, sir; there is not; there was first a watch factory, then a sewing-machine factory, and afterwards something else.

Q. What did it cost?

A. I could not tell, sir.

Q. About what did it cost; what in your judgment?

A. I have got a thousand dollar greenbacks in it

Q. How many other people put a thousand dollars in it?

A. I think about seventy-five; I don't know. I don't state from the records.

480 Q. What improvements are there in Hyde Park; what do they consist of?

A. Well, north of 73rd street it is nearly all residences.

Q. What kind of residences?

A. North of 63rd street all very nice residences—pretty substantially made.

Q. Not built on posts?

A. There are a good many of them so, but they are reaching a point when more permanent buildings are made.

Q. Around Grand Crossing and a portion of Hyde Park?

A. Around the south side 60 or 70 houses stand on posts, with the water underneath the houses; but there are some houses there that have basements and cellars, because the level of the Lake Calumet is sufficiently low to drain the low country there into it.

Q. You mean to say that a person going down to Hyde Park and through that section [of] this country would be under water?

A. No, sir; I would not give that impression.

Q. Take your house; it is not on poles, is it?

A. No, sir.

Q. What is it on?

A. Stones.

Q. And a good cellar under it?

A. Yes, sir.

Q. How near is it to this land—this land in question?

A. About five-eight-s of a mile, and there is plenty of land there that you could build cellars under.

Q. What did your house cost you?

A. Fifteen thousand dollars.

Q. The other houses in Hyde Park are all like yours, a
481 good many of them; is there any finer suburb in Chicago?
A. A good many houses cost a good deal more, but more cost less.
Q. Is not Hyde Park one of the very best suburbs to Chicago?
A. That is the way we talk it up.

Redirect examination by Mr. STORRS:

Q. Hyde Park is——
The COURT: You speak of the height of the level at Grand Crossing as being higher than the level in controversy. What was it you said about it?
A. I said it was about five feet, I should say.
Q. It was higher or lower at Grand Crossing than this land in controversy?
A. This land is lower than the land at Grand Crossing.
Mr. SWETT: Q. How much lower is the high land?
A. The high land is higher.
Q. Higher than Grand Crossing?
A. Yes, sir; higher than Grand Crossing.
Q. How much is the low land lower than the low part of Grand Crossing?
A. What do you mean by Grand Crossing? Do you mean Hog Lake? It is a part of Grand Crossing that is not any higher.
Q. Taking the watch factory as a centre, go around a circle four blocks, how does that compare in height with the lowest of the 80?
A. The low land of the 80?
Q. Yes, sir.
A. Well, I think it is perhaps two feet higher—three feet higher.
Q. How much higher is the high land of this tract than
482 this circle? How much higher is the high land of this tract here than a circle of four blocks around the watch factory at Grand Crossing?
A. I should think it was two feet higher.
Q. Two feet higher or two feet lower?
A. Two feet higher, and maybe some points of it higher. I mean the average. Some points of the higher may be considerably more than that. I think — may embrace this in the limit named.
Q. Suppose you get down to this Hog Lake; where do you go there?
A. You go down lower than the water would stand.
Q. You go down lower than this land?
A. Yes, sir.
Q. If you was to go on the highest mountain there you would be twenty feet above the lake—the highest elevation would be twenty feet above the level of the lake?
A. More, perhaps.
Q. Do you know of any one that is more than twenty feet in the whole village of Hyde Park?
A. You are asking questions I can give my opinion on, but I

have not seen a surveyor's statement; just take my impression as I look at it—look at it with the naked eye.

Q. Yes.

A. Well, I should say twenty-five feet.

Redirect examination by Mr. STORRS:

Q. How far is your house from this 80 tract?

A. Five-eighths of a mile, I should say.

Q. Your house is on the water?

A. My house is right on the centre of a ridge.

Q. And a portion of this 80-acre tract is under water?

483 A. A good deal of it is so wet you would have to put on rubber boots to walk on it.

Q. Tell this jury, Mr. Hibbard, what there is about Grand Crossing why men, and not muskrats, live there.

A. There are four trunk lines of railways pass there and cross each other, and it is a convenient point for shipment and a good place for manufacturing, and we try to show this to people, and they would look at it sometimes, but would insist upon its being pretty wet.

Q. And, then, what makes Grand Crossing is simply the fact that these railroads cross there?

A. Yes, sir; and the railroads have dug a deep ditch, which would hold water—lead water right off the lake.

Q. Have you discovered in your experience—and you have had a pretty varied one—any persons who bought property there for the purpose of living there?

A. No, sir; I have known people to have gone there in business, and have lived five miles from there.

Q. Have you ever heard of a case of a man living there unless he is obliged to?

A. I would not put it just that way, but that is pretty near it.

Q. That is about the fact of it?

A. Yes, sir.

Q. When you go to South Chicago there is water there?

A. Yes, sir, or supposi-tious water. O, yes, water is just as good as any.

Q. Talking about Pullman, does that pretty little place of Pullman bear any sort of relation on earth to this 80 acres of the Phillips tract?

484 A. It does—about as imagination could paint it. Pullman is no drift. Pullman is native prairie, and never was drift.

Q. Pullman has got a complete system of drainage?

A. Yes, sir; it is a double one—one for surface water and one for sewage.

Q. It is not all sand down there, and good buildings are there?

A. Yes, sir.

Q. Hence it would be an illustration of the scriptural doctrine of a man who built his house upon the sand?

A. I don't know, sure.

Q. Now, is there any sort of comparison, or is it absurd to compare Pullman with this 80 tract?

A. That sand is pretty good foundation if you keep the water from it.

Q. And keep it perfectly dry, and don't let the rain fall on it, and keep a shed on it?

A. I don't think any man could afford to take that land and improve it and keep it for ten years, even if it was given to him.

Q. Have you heard anything in the course of your career, sir, more absurd than Swett's illustration between South Park, South Chicago, and Pullman, this 80-acre tract?

A. A good deal of this 80 tract is very handsome land.

Q. How much of it?

A. I suppose about half of it, perhaps.

Q. And in that estimate you gave you have given full credit for this handsome tract?

A. I think I have.

Q. Now, what are the surroundings of this?

485 A. Of this piece of land?

Q. Yes.

A. When the parks were first located there?

Q. Now.

A. There are many houses located near it.

Q. In 1870?

A. What Mr. Wadsworth said about it is just my recollection of it—of the number of houses or improvements.

Q. It is a pretty lonesome tract, ain't it?

A. It was.

Q. Is it not tolerably lonesome now?

A. Yes, sir; in an educated way more particularly.

Q. As far as houses are concerned?

A. Yes, sir.

Q. You would not call it a sociable place, would you?

A. There have been a good many houses built not very far from the southwest corner of the park. Near the Park Institute they have been obliged to establish a school-house down there.

Q. How far is that off?

A. About a half a mile from the corner, and there are a good many houses built in there.

Q. Taking the land between Phillips' tract and where it is, how much are the improvements down there?

Counsel for plaintiff objected to the question as a re-examination of this witness.

A. As I remember it, there has not been a house built on the west side of Stony Island avenue from Fifty-ninth street on the north line of this tract to 63rd street, a half a mile south—not been a house there within the last twenty years. There never has been a house built there. There is not one there. South of 63d street there has been some houses built.

486 Q. Is the character of this property for building purposes, or as habitable places for men and women to live upon, improved, in your judgment, by the development at Pullman? Has the ground been made any dryer, or property been made any more habitabler?

A. Not in the slightest.

Q. If you were going to try it on this county, would you think it more fit now than you did before Pullman was built?

A. No, not fit at all for anything; perhaps it has lessened the chances of selling some of it by driving people off in another direction.

Q. And so you, on the whole, would consider the value a little less since Pullman — than before?

A. I should so; yes, sir.

Q. Tell us what the real desire *is* down in that Grand Crossing country was and still is?

A. To get rid of the water.

Q. The water is not in the tank, but in the bottom of the houses?

A. Under the houses, around the posts upon which the houses stand.

Q. And that a man who is not a speculator in real estate would regard as objectionable?

A. Yes, sir.

Recross-examination by Mr. SWETT:

Q. How far did you say it is to Pullman from this land?

A. Six or seven miles, I guess.

Q. Now, I will ask you: I understand you to say that
487 Pullman lessens the chances to sell this land?

A. I did not say it. I say sometimes it lessens the chances of selling it.

Q. Don't you say this land is less because Pullman is located there?

A. No, I don't say so.

Q. Do you think it will be worth less?

A. I think it will be worth more in the end.

Q. Suppose you take a circle right around here and put desirable towns of ten thousand inhabitants all round; would that make the land much worse?

A. O, no.

Q. It would be better, if anything, in every way?

A. I think so.

Q. Then the nearness of Hyde Park and the nearness of other places all tend to make this land more valuable?

A. I think so.

Mr. STORRS: When was Pullman located?

A. In the spring of 1880, I think.

Mr. SWETT: And you say there are ten thousand people there since?

A. I think they rightfully claim ten thousand; but I think the census makes it out about nine thousand. They polled twenty-one hundred votes at one election.

Mr. STORRS: It is a manufacturing place?

A. Yes, sir, Mr. Fuller, founded by the company?
[Q.] —?
A. The Pullman Palace Car Company.
Mr. SWETT: Do you know of any sale of land within half a mile of this tract of land during the year 1870?
488 A. Yes, sir.
Q. Sales three times the amount you put on this land?

(Counsel for plaintiff objected to the question, which objection was overruled by the court, to which ruling of the court counsel for the plaintiff then and there duly excepted.)

A. Well, I don't now call to mind any sales quite so near as half a mile—no sale at all. I don't now call to mind any sale at all.

JEFFERSON HODGENS was then called as a witness on behalf of the plaintiff, and, being duly sworn, testified as follows:

Direct examination by Mr. GREEN:

Q. What is your name?
A. Jefferson Hodgens.
Q. Where do you reside?
A. Chicago.
Q. What is your business?
A. Contracting business.
Q. Have you had any experience in drawings?
A. I have.
Q. Let me call your attention to the tract of land between 59th and 63rd street, Stony Island avenue; how would you go to work to fill that land? What would be the practical way of filling it?
A. The most practical way of filling it would be by dredging it from the lake and filling it up.
Q. How would you go about that?
A. I would have to dredge about a mile from the lake, from
489 which I would take it in a scow to the ship and transport it back by wagons or cars.
Q. How much would that cost per cubic yard?
A. It would cost, I should think, from one dollar to a dollar and fifteen cents.

490 DECEMBER 9TH—10 a. m.

The argument on the question as to the right of the park commissioners to show the fair cash value of the property in controversy on August 27th, 1870, without taking into consideration the effect produced by the location of the park upon land in that vicinity outside of the boundaries of the park, was concluded, and the question taken under advisement by the court.

Mr. DUNLEVY: We propose to prove by Mr. Hoyt, who is now present, a sale made to the park commissioners in the fall of 1870.

Objected to.

And thereupon the plaintiffs called as a witness on their behalf W. H. HOYT, who, having been duly sworn, was examined by Mr. DUNLEVY, and testified as follows:

Mr. STORRS: If they call the elder Mr. Hoyt on this question I move to strike out as hearsay the testimony of the son as to the extent and quantity of the property.

Mr. FULLER: You will remember the son stated that it was
491 about two acres when it was three and a third acres.

The COURT: We will hear the witness first.

Q. Where do you reside?

A. Hyde Park.

Q. In the neighborhood of this land?

A. Yes, sir; quarter of a mile from it.

Q. And have you resided there for many years?

A. Twenty years; I moved there during the war.

Q. State whether you owned any land inside this park at the time of the passage of the law or at the time the park commissioners selected it for the park.

A. I did.

Q. You may point out to the jury where you own land inside the park on that map.

A. It was a little south of 63d St., on the lake. I owned ten acres, but I sold a portion of that previous to this. The front was nearly one hundred rods of the whole subdivision; there was some two acres left. There was this north end and then a fraction back of those lots.

Q. Two or three little pieces out of the whole that you had left?

A. Yes, sir.

492 Q. State whether you made a sale of that property about the latter part of 1870.

Mr. FULLER: You had better ask him when.

A. I don't recollect the date, but it was something, I should think, near that date. It was some months before it was closed up, and the date of the deed, I think, was in March some time.

Q. March of what year?

A. 1870.

Q. 1870 or 1871?

A. 1870, I think; I am not positive as to the date of the deed; it was closed up.

Q. Some months before the date of the deed?

A. Yes, sir. I think it was closed before the fire, and they did not record it, and there was a new deed made.

Q. A new deed reciting the date of the old one, wasn't there?

A. Yes, sir.

Q. The trade was before the fire?

A. Yes, sir.

Mr. FULLER: The deed was recorded before the fire. What
493 Mr. Hoyt is saying is quite erroneous. He says he believes it was not recorded, and there was a new deed given.

A. That is what I understood; that they had lost the deed or it was burnt up.

Mr. ——: But it had been recorded.

A. I did not understand that.

Mr. FULLER: The date of the deed was March 4, 1871. It was recorded, as I will show, and the deed itself was burnt up. I did not know there was a new one, but it was not material.

Q. The date of the deed, it is admitted, was March 4, 1871. Was that trade made before the execution of the deed; and, if so, how long before?

A. I should think from four to six months before that. It was a long time, I know, before we got it closed up.

Q. You may state just about how much land there was, what you got for it, and who you sold it to.

Mr. FULLER: I object to that. The deed gave the number of acres.

The COURT: I suppose he may state about the number of acres if knows the fact.

494 Q. What amount did you sell and to whom did you sell?

A. There was nearly two acres—within a fraction—and the offer was $3,000 an acre.

Q. Did you accept that offer and get that amount?

A. Yes, sir.

Cross-examination by Mr. FULLER:

Q. How clear is your recollection of the transaction?

A. I remember it as plain as though it had been within a short time. The main features I don't remember—the exact date of the deed—but I know these facts.

Q. Do you recollect the contents of the area you have been talking about—the quantity you sold them?

A. I know from recollection there was a trifle less than two acres, according to Mr. Waite's survey. In surveying the whole piece he made it ten acres.

Q. You reason from the survey of the whole piece?

A. We took out the lots that were sold and measured those and took them out, and the balance was about two acres.

Q. Would not the contents of the deed, if that gave the

495 quantity, be correct?

Objected to as being a matter of law.

The COURT: I think they have a right to ask him whether he intended to embrace more or less in the deed.

Q. The contents of the deed would be likely to be correct, would it not?

A. It might be; I don't remember particularly about the contents of the deed, but I know from the figuring of the ground there was about that.

Q. Do you recollect how much there was of the north fraction—this little corner up here?

A. I don't remember.

Q. Do you remember how much there was in the south fraction?

A. I do not now.

Q. Do you recollect how much there was in the west corner of the triangle?

A. I don't recollect the exact amount; they were called two acres, or within a fraction of it.

Q. Do you recollect what the total amount was that you received?

A. I received fifty-nine hundred and some dollars; I could not say, exactly.

Q. You conveyed the land by deed, did you not?

A. Yes, sir.

496 Q. And that is the deed of March, 1871, to which I have referred, is it not?

A. I think that is the deed; yes, sir.

Q. Was the $5,945 paid all at one time?

A. I think it was; I am not positive; I know Mr. Cornell had a demand against me of $3,000; whether or not I gave him an order or turned over part of it to him I don't recollect now, but I think it was paid all at once.

Q. Was Mr. Cornell a park commissioner at this time?

A. Yes, sir.

Q. Did Mr. Cornell conduct the negotiations?

A. Yes, sir; he did, I think; I had most of the conversation with him; I met the board together.

Mr. THOMPSON: In fixing this price, was the price fixed per acre?

Mr. FULLER: That is objected to.

Mr. THOMPSON: I understand that it was.

A. That is my understanding; I think that was their offer.

Mr. FULLER: Who made the offer?

A. The board.

Q. Mr. Cornell?

A. I am not positive; I had a talk with Mr. Gage and Mr. Cornell and some of the others; I think I met the board two or three times.

497 Q. Have you made any effort to refresh your recollection?

A. No, sir.

Q. Not since then?

A. No, sir.

And thereupon MARCUS A. FARWELL was called as a witness on behalf of the defendant, and, having been duly sworn, was examined by Mr. FULLER, [and] testified as follows:

Q. What is your business?

A. I have been engaged in the grocery business about twenty-eight years until within a year.

Q. How long have you resided in Cook county?

A. Over 33 years.

Q. Have you during that thirty-three years owned and dealt in real estate on the south side in the southern part of the county, and south of the city of Chicago?

A. Yes, sir; to some extent.

Q. Describe what you have owned, and when?

A. In the year 1855 I bought an undivided interest in a section of land surrounding what is now Grand Crossing; since then I sold my interest in the land, or the greater portion of it, in 1864;

498 I also retained a small portion right at Grand Crossing running to the railroads from the north; in 1866 I bought 52 acres of land bounded on the north by 63d St., and on the west by South Park avenue, what was then called Kankakee avenue.

Q. Is that the grand boulevard?

A. Yes, sir.

Q. That was in 1866?

A. In 1866, I think that was. I did own two or three small lots in Hyde Park. I don't remember when, now.

Q. Were you acquainted with the value of land in Hyde Park and vicinity you have mentioned in 1870?

A. Yes, sir; to a certain extent I was interested.

Q. Were you in any corporation owning land in that vicinity?

A. Yes, sir; I am interested in the Oakwood Cemetery Association.

Q. An officer?

A. Yes, sir; I am president of it.

Q. Where is that situated?

A. That is bounded on the north by 67th street, and on the west by Cottage Grove avenue, a portion of the property running east to the Illinois Central railroad on 67th street.

Q. Can you point it out on the map?

A. Yes, sir. (Indicating.)

499 Q. You say you were acquainted with the values to a certain extent. How familiar have you been with values down there?

A. I kept track of the property. My own property is a sort of guide. I kept track of it what I would regard my own property as worth, and to do that would keep somewhat posted on the value of surrounding property.

Q. Have you observed the way in which water flows in Hyde Park as to drainage?

A. Yes, sir; in that locality I have.

Q. State how it flows?

A. It flows generally from the west to the east. Sometimes, perhaps, to the south in the vicinity of the cemetery line. The location of the land in that vicinity is such that the drainage is about the same south and north and east.

Q. How high is State St. above the lake?

A. As I understand it, from——

Mr. THOMPSON: Never mind, unless you know.

A. About 20 feet, I should say.

Q. Above the ordinary stage of water?

A. Yes, sir.

Q. From there, towards the lake, how does the ground run? Describe it.

500 A. It has ridges and then drops down onto low ground prairie land and ridge again, and then drops again onto prairie land, and so on until it reaches the lake.

Q. Is there a general falling in the elevation of the ground?

A. Yes, sir; each ridge is lower than the one to the west, as a rule, and each piece of low ground is also lower than the low land to the west until you get to the lake, where it becomes very low.

Q. The flow of water as to the general direction; what should you say it was?

A. It would be to the east until it reaches the lake.

Q. Are you acquainted with the premises in controversy, which lie between 59th and 63d streets and Stony Island avenue and the lake, known as the Phillips tract?

A. Yes, sir; I know the property.

Q. How many years have you known it?

A. Twenty-five years and over.

Q. Have you been on it?

A. Yes, sir.

Q. How often?

A. I could not say how often; not very often.

501 Q. Several times?

A. Oh, yes, sir.

Q Were you on it last year?

A. Yes, sir. I was on it at the time they were cutting ditches on it; I was particularly on it at that time to watch the progress of the ditches and the flow of the water.

Q. That was part of the general system of drainage?

A. Yes, sir; at that time.

Q. When was that?

A. I think that was about 1865.

Q. You were on it a year ago?

A. Yes, sir.

Q. Have you not been on it occasionally in the intermediate time?

A. Yes, sir; in the meantime.

Q. On the 27th of August, 1870, what, in your judgment, was the fair cash market value of the west eighty [acres] of that tract. You can divide it as you please, according to the nature of the ground. Take the front on Stony Island avenue.

A. I would value the front on Stony Island avenue, including all the ridge to the east of it—the entire front on Stony Island avenue, including the ridge, I would value that at $1,000 an acre.

502 Q. How would you value the low lands between Stony Island avenue and the next ridge?

The COURT: Which is that he places at $1,000?

Q. The 26 acres you mean?

A. Yes, sir; on Stony Island avenue and all that ridge that fronts on Stony Island avenue, and east of it there is some on the ridge that does not come up to Stony Island avenue.

Q. Then what would you value the low ground between Stony Island avenue of 26 acres and the next ridge to the east?

A. About $200 an acre.

Q. What would you value the ridge land on the east of the tract of this west eighty?

A. That I valued at $1,000 an acre.

Q. That was on the west. Then you valued the intermediate part at $200?

A. Oh, yes, sir; I should value that at $600 an acre.

The COURT: That is on the west.

Mr. FULLER: On the east is the west eighty, the high land other than that on Stony Island avenue.

Q. Take the piece on the lake shore of 34 acres; do you remember that land?

503 A. Yes, sir.

Q. You are acquainted with it, are you not?

A. Yes, sir.

Q. What, in your judgment, was that 34 acres on the lake shore worth?

A. I should value the ridge land at $600 an acre and the low land at $200 an acre.

Q. Do you remember the time of the passage of the park act?

A. Yes, sir.

Q. Prior to that time had the passage of such act been talked about?

A. Yes, sir.

Q. What was the effect on land in that vicinity by the agitation of the park project?

A. It advanced the price, I think.

Q. Have you in the values you have given allowed for an increase in the value of this land up to the time of the adoption of the park act?

A. By reason of the park act, anticipation of it; yes, sir.

Cross-examination by Mr. THOMPSON:

Q. There you stopped, did you not, in fixing the value of this land, right at the point you have just named?

A. Yes, sir.

Q. Please explain again more fully——

504 The COURT: Did you give it the benefit of any other cause arising from the general growth of the city as well as the agitation of the park act?

A. Yes, sir; certainly I took it all in the prospect of the park and the location of the park.

Q. Up to that time?

A. Yes, sir.

Q. Up to the time of the park act?

A. Up to the time you refer to—1870.

Q. You testified before in this case, did you not?

A. Yes, sir.

Q. Have you testified in all the condemnation cases that the park have had?

A. I have testified, I think, in only two previous to this time.

Q. Two other cases?

A. No other one, except this one.

Q. You testified in the Colehour case, did you not?

A. No, sir; I think not.

Q. Were you selling land in this vicinity anywhere in 1870?

A. No, sir; excepting I might have been selling cemetery lots.

Q. You don't mean to judge of this by the price you got for cemetery lots, do you?

A. No, sir.

Q. You sold those by the square foot, didn't you?

505 A. Yes, sir.

Q. You have not fixed these values with any reference to whatever —, have you?

A. No, sir; not at all.

Q. Outside of this cemetery lot business were you dealing in property in that neighborhood in 1870?

A. I owned property. I was not buying and selling as a business.

Q. Did you sell any?

A. Not at that time.

Q. You understand my question, and can answer it?

Mr. FULLER: He says not at that time.

Q. Do you recollect any sales in 1870?

A. I cannot locate. I cannot locate any sales.

Q. Did property rise in value from May, 1869, to August, 1870?

A. Yes, sir; I think it did.

Q. Very rapidly?

A. Quite so.

Q. Did not the excitement, with reference to the proposed passage of the park act, appreciate lands in that neighborhood very materially?

A. Yes, sir.

Q. And did not that appreciation take place from the fact prior to its passage largely?

A. No, sir; I think not.

Q. Don't think it did?

506 A. No, sir; I think not.

Q. You don't think that the discussion in regard to the park had anything to do with the prices until after the passage of the act?

Mr. STORRS: That is a misstatement of the witness'*es* answer. Your question was largely. He says not largely.

Q. How much of the appreciation caused by reason of the park took place prior to the actual passage of the act?

A. Oh, I should think perhaps 100 per cent.

Q. That is, the whole of it?

Mr. FULLER: Upon its previous price?

A. Yes, sir; upon its previous price.

The COURT: I understand you. You think the mere agitation of this park and the anticipation of its establishment enhanced the value of that property in the neighborhood of 100 per cent.; that is, doubled it?

A. Yes, sir; that whole section of country.

Q. When did the park agitation first take place?

A. Two years before the passage of the act, or even longer a little, perhaps.

507 Q. What effect was there after the Legislature passed the bill prior to the selection by the park commissioners from February 24, 1869, to May 5, 1869; did property advance?

Mr. STORRS: I object to that question. It is not fair. The passage of the bill selected the lands.

The COURT: He may answer the question.

A. I should think it did advance, and continued to advance.

Q. Was that advance caused by reason of the park?

A. Yes, sir; partly so.

Q. Then the effect of the park did not take place at the time of the passage of the act?

A. Part of it.

Q. What part of it?

A. I could not state that.

Q. Was it not substantially all as far as the park gave it any effect take place immediately at the passage of the act?

A. No, sir; I think not.

Q. Did property continue to rise?

A. For some time.

Q. Was that rise caused all over the country?

A. I would not say all over the country, but I should say near the city in the location of the parks.

508 Q. Did it not in the city on the north side and the west side cause a general rise all around the city?

A. There was a general rise all over the city.

Q. A very material one, was there not?

A. Yes, sir.

Q. Did not prices go up from February, 1869, up to the middle of August, 1870, at a very rapid rate?

A. Not a very rapid rate.

Q. What was the condition of the market in the real estate business in August, 1870, in this city?

Mr. STORRS: I object to that question. That is altogether too vague. You may as well ask about the general prosperity of the country.

The COURT: He wishes to know whether real estate was active or otherwise at that time.

Q. In the city of Chicago, Lake, Hyde Park, Evanston, and all around the city?

A. There was considerable activity.

Q. Was it not very active?

A. My recollection is it was not very active until after 1871.

Q. You swore before in this case, did you not?

A. Yes, sir.

509 Q. From Stony Island Ave. to Cottage Grove avenue is a mile, is it not?

A. Yes, sir.

Q. And from Cottage Grove avenue to Kankakee avenue is half a mile?

A. Yes, sir.

Q. Now, I will say, taking the street and block east of Cottage Grove avenue, which is a block short of a mile from this property, from Stony Island avenue going to the first street east of Cottage Grove avenue would be a mile from the west line of it probably, less one block?

A. Yes, sir.

Q. Outside of lots which you sold in the cemetery, do you know of a single sale in Hyde Park from the fall of 1869 to the spring of 1871?

A. No, sir; I cannot locate any sales.

Q. Confining yourself to the year 1870, do you know of a sale within two miles of this?

A. I do not by dates; no, sir.

Q. Was there much speculation going on in real estate in 1870 in this location?

A. Not a very great deal, in my judgment.

Q. If there was you did not know anything about it?

510 A. I should have been apt to know what was going on.

Q. Did you on the trial before, in answer to the following question, make the following answer: "Q. This was in 1870? A. Yes, sir. Q. Was there not a great deal of speculation in real estate? A. Yes, sir." Is that correct; did you swear to that?

A. Of course there was a good deal of speculation, but as I said before——

Q. That very year?

Mr. GREEN: Let him finish the answer.

A. That time did not compare with the speculation that followed. That is my recollection.

Q. That is not what I asked you. Now, were there not a large number of sales going on in that location in 1870?

A. I should say there — a good many sales.

Q. Running clear back to the Vincennes ridge, which is up at Kankakee Ave., I understand you, there is a succession of sand hills and low ground clear to the lake; is that correct?

A. Yes, sir.

Q. And they empty in each direction to the northeast, do they not?

511 A. To a certain extent.

Q. They run northeast and southeast, do they not?

A. Yes, sir; the ridges.

Q. And the low lands.

A. Yes, sir; that is the general direction.

Q. You have put a price upon the low land in this west eighty at $200 an acre because of its being low is; that correct?

A. Yes, sir.

Q. How much lower is that low ground on the west eighty than the land at the center of Grand Crossing; do you know?

A. I don't know positively, but I should say it was about two feet lower.

Q. Suppose it should turn out it was only six inches lower; would that change your idea of its value?

A. No, sir; not at all.

Q. Would anything change your idea of its value there?

A. I cannot tell.

Q. Suppose it was three feet lower than the ground at Grand Crossing; would that change your idea of the value there?

A. If it was three feet lower it would be worth less money.

512 Q. Then if it was three feet higher would that change its value?

A. Than at Grand Crossing?

Q. Yes.

A. It would be more valuable.

Q. Than you have put it?

A. Yes, sir; I think so.

Q. Suppose it was the same height as at Grand Crossing; would that change your value?

A. No, sir; not particularly.

Q. And yet you have estimated it on it being a foot lower. How high is Grand Crossing above city datum?

A. No, sir; not particularly.

Q. Do you know how high it is above the general level of the lake?

A. It varies very much there.

Q. The ground varies?

A. Yes, sir; very much at some places near the crossing. West of the crossing the ground is quite low. At the crossing it is a little higher. As you go east it rises until it is all high and dry land, and the same as you go north. There is a little rise of the ground north; most of it from Grand Crossing north to 63d street is about the same level.

Q. About how high is that above the average level of the lake?

513 A. I should say the lowest point four and a half to five feet.

Q. Above the level of the lake?

A. Yes, sir.

Q. That is your judgment of it?

A. Yes, sir.

Q. How is the low land as compared with this land? How was it in 1870, immediately northeast of this low land—was it higher or lower?

A. Higher.

Q. Immediately north of 59th St.?

A. I am not familiar with that—with the ground in that vicinity.

Q. Don't you know what that locality is?

A. It is low ground, but I am not acquainted with it; never was over it much, or very little.

Q. You don't know the condition of that in 1870?

A. Not exactly.

Q. Did you know them?

A. Yes sir; I knew them.

Q. How did you come to know this rather than the property across the street?

A. When they were cutting ditches there I used to go there quite often to ascertain what action the ditches were making upon
514 the land, how it was taking off the water.

Q. Did it take it off?

A. When the ditches were opened and clean.

Q. At the mouth?

A. At the mouth. I came to know this from the fact in the property around the cemetery we drained in that direction; hence I was watching it for that reason. In fair weather, or ordinarily dry weather, when the ditches were kept open, we kept the water off the surface tolerably well.

Q. Of what property are you speaking now?

A. This property—the park property.

Q. Did not these ditches, along in 1870 and 1871, constantly fill up at the mouth?

A. Yes, sir.

Q. Do you remember a pier that was put out there at the 63d-St. ditch?

A. Yes, sir.

Q. There was a pier at the outlet, was there not?

A. Yes, sir.

Q. Do you remember how far out in the lake that extended?

A. No, sir.

Q. About the length of the pier, I mean.

515 A. No, sir.

Q. Can't you give us some idea about it?

A. No, I can't.

Q. 50 feet?

A. I should say 50 feet, at least.

Q. Did not the sand accumulate there and fill up the box at the outer end of the pier?

A. Yes, sir.

Q. Did it constantly do so?

A. Yes, sir.

Q. They had to hire men to dig out the dirt there?

A. Yes, sir; that is my recollection?

Q. Was that shore washing away much at that time?

A. I cannot state in regard to that. My recollection is it was washing away, more or less?

Q. If it was washing away, how was it it did not wash away from the end of the pier 50 feet out in the lake?

A. I don't know.

Q. As a matter of fact, did it not accumulate there until after the government pier wa. run down south, on the south side, of the harbor?

A. Might a little, but I think not very much.

516 Mr. FULLER: You have said that in your judgment this property increased 100 per cent. What was it worth before the agitation in reference to the park commenced?

Mr. THOMPSON: That was back in 1867.

The COURT: He may answer the question.

A. I should say it was worth not more than half as much as the estimate I put upon it.

Q. The question, without any park agitation at all, what was it worth? Before any agitation in respect to the park at all you state it increased 100 per cent. prior to that—prior to the adoption of the park act, in anticipation of it. Now, my question is, What it was worth prior to any agitation at all on that subject. Take for instance that on Stony Island avenue.

A. I should not put that at more than $500 an acre, and the low ground certainly not over $100. I would regard that for the low land as a very high price indeed.

Q. So you have given in your estimate of the value in August, 1870, all that it gained by reason of the passage of the park act?

A. Yes, sir.

517 Q. And every other element?

A. Yes, sir.

Adjourned to 2 o'clock p. m.

DEC. 9TH—2 p. m.

BRYAN PHILPOT was then called as a witness on behalf of defendant, and, having been duly sworn, was examined by Mr. FULLER, and testified as follows:

Q. How long have you resided in Cook county?

A. About seventeen years.

Q. What has been your business?

A. Real estate.

Q. Have you had experience in buying and selling property on the south side and in the villag- of Hyde park?

A. I have.

Q. Please state the result of your experience?

A. I have bought and sold on my own account a good many hundred thousand dollars' worth of property, and perhaps millions, for other parties on the south side.

Q. You say perhaps millions; is it millions?

A. Yes, sir.

518 Q. During what periord?

A. From 1866 or '7 up to the present time.

Q. Do you know the piece of gro-nd in controversy in this suit known as the Phillips tract?

A. I do.

Q. Have you bought and sold for yourself, or others, real estate in the vicinity of that tract during the years you have mentioned?

A. Yes, sir.

Q. Did you have any transactions in 1869 and 1870 in real estate in that vicinity?

A. Yes, sir.

Q. When you say that your business is real estate, what does it include, Mr. Philpot, buying and selling as owner, or making valuations?

A. Oh, buying and selling, making valuations, trading one piece for another, everything that embraces a broker and dealer in real estate.

Q. Have you ever been upon this tract?

A. A number of times, sir.

Q. When did you first go on it?

A. I think it was in 1867.

Q. Under what circumstances did you go upon it?

A. I went down with my partner to look at a piece of
519 property with a view of purchasing.

Q. And you have been on it since, have you?

A. A number of times.

Q. What, in your judgment, Mr. Philpot, was the fair cash value of the west 26 acres of the west 80; that is to say, of the 26 acres on Stony Island Ave. on August 27th, 1870?

A. I should say from $1,000 to $1,200 an acre.

Q. What, in your judgment, Mr. Philpot, was the low ground worth between the 26 acres and the ridge on the east side of the west 80?

A. I should think it was worth a couple of hundred dollars an acre.

Q. A couple of hundred dollars.

A. About two hundred.

Q. What, in your judgment, was the high land on the east side of that west 80 worth in August, 1870?

A. Fronting on the lake?

Q. No; the same 80—the west 26 acres.

A. I should say about $800 an acre.

Q. You are acquainted with the shore piece, are you?

A. Acquainted with what?

Q. The shore piece—the 34 acres on the shore—in Aug., 1870.

A. Yes, sir.

Q. What would you say the fair cash value of that was in 1870?

520 A. Embracing the low piece?

Q. Well, divide it as you please. The high and low?

A. I should say the high land was worth from 6 to 7 hundred dollars, and the low land perhaps $200 an acre.

Q. Do you remember the passage of the park act?

A. Yes, sir.

Q. Was that preceeded by an agitation upon the subject of the park?

A. The agitation of the park act excited values down there.

Q. Before it passed was there an advance in the value of lands—in the value of this land, for instance—by reason of the anticipation of a park?

A. The anticipation of a park——

Q. Before the lines were fixed; before the lines of the park were fixed?

A. The agitation of a park increased the value of lands down in that vicinity.

Q. In the valuation you have given us of the cash value of this land in August, 1870, have you included the advance caused by the anticipation of a park?

A. I have, sir.

Q. And the general increase in value, have you?

521 A. Yes, sir.

Q. All the elements that go to made up the value of the land on that date?

A. I have considered them all, sir.

Q. What was that land suitable for, Mr. Philpot, in August, 1870?

A. Well, the better portions of it on Stony Island Ave. can be used for building purposes, but the low land was not good for anything, in my judgment—that is, the lowest swamp land.

Q. Leaving out, Mr. Philpot, the increase in value caused by the anticipation of the park, what, in your judgment, was that land worth on the 27th day of August, 1870?

Counsel for the defendant objected to the question, which objection was overruled by the court; to which ruling of the court counsel for defendant then and there excepted.

A. Leaving out these elements?

Q. Yes; leaving out that element of advance caused by the anticipation of a park.

A. Leaving out the park agitation; well, that is a pretty difficult question to answer. If you take away from it the agitation of

522 the park I cannot tell what it is worth.

Q. Well, put it in that way.

A. I would not value it at one-half the amount I put it at if it was not for the agitation of the park and certain other things.

By Mr. THOMPSON: What else.

A. The agitation of the park land. I will confine myself to the park.

Mr. FULLER: And after the agitation what would you say the low land would have been worth?

A. Oh, I don't suppose worth one hundred dollars an acre—that is, the swamp land, the low lands.

Q. How much would the Stony Island avenue — been worth?

Mr. THOMPSON: Our exception runs to all this.

A. Five or six hundred dollars an acre.

Cross-examination by Mr. DUNLEVY:

Q. Mr. Philpot, this low land you put at $100 an acre or nothing?

A. If there was any park attached to it I might qualify that by saying it was a matter of speculation.

Q. Everything done was speculation those days, was it not?

A. Pretty much.

Q. You put it at that because it was so low?

523 A. That's the only particular reason.

Q. How much lower or higher is the low land of this 20-acre tract?

A. On the boulevard?

Q. Running back; yes. How much lower or higher is that land than the land immediately at Grand Crossing?

A. Yes, sir. Oh, yes; I know where the Grand Crossing is. I should not think there was much difference. Probably this land is a foot or two lower than it is at Grand Crossing. The low land is perhaps about as high as it is at Grand Crossing.

Q. What would be the average value of this land between 1870 and 1880? How would the value of this land compare with the value of land at Grand Crossing?

A. I am familiar with the land at [Grand] Crossing. There circumstances under which sales [were] made at Grand Crossing at a higher price than made a- — sale of this land —; for they were making sale there for the purpose of building factories, and all that sort of thing, and draining that land, and making a show of bringing it into the market, and there were some sales made at

524 Grand Crossing at very good prices.

Q. Now don't this land here and these depots, being considerably nearer the city, give a better transportation to the city than at Grand Crossing? You know where this 63rd-[St.] depot is and you know where 57th-St. depot is?

A. Yes, sir.

Q. 30 or forty trains a day passing this in 1870?

A. I presume there were.

Q. 30 or 40 passenger trains?

Mr. FULLER: You mean local trains?

A. A great many trains; I don't know how many.

Q. Was there not half-hour trains that run down here to a Y and turned back every half hour?

A. There might have been, but I don't recollect of there being half-hour trains then.

Q. Do you recollect of there being hour trains in 1870?

A. I don't recollect how many.

Q. I asked you about the difference in price caused by the difference in elevation that you didn't give then; you said it would be

worth — because of the railroad facilities; now you answer
525 that question, as to the railroad facilities, that they were as good as at Grand Crossing.

A. Yes, sir.

Q. And for about half the price you could come in?

A. Well, it was cheaper.

Q. And at half the length of time?

A. Well, there was some difference of time.

Q. Land you had observed and the same point in the city from this land that was at Grand Crossing?

A. Yes, sir; you came on the Illinois Central or Mich. Central.

Q. Are you acquainted with the character of the land right north of this 80 acres—the low part of it; you say there is a slough in the center? Was there in 1870?

A. Yes, sir, I was on it then.

Q. Which way did the water run on that slough?

A. It did not seem to run any way.

Q. Did it stand still?

A. There was a ditch or two leading the water to the lake out of the slough.

Q. The natural lay of the ground was such that the water run north — 1870?

A. No, it run toward the lake.

526 Q. I want to know if you know where the water from that slough in the center went to, whether it came north into the lake or whether it came over the ridge and came into the lake, or whether it went south and got into the lake?

A. Nothing but one house.

Q. You are mistaken about that.

A. I might possibly be mistaken.

Q. You can't swear which way the water run?

A. I cannot be positive; my impression would be, sir, some — it could not run east through that ridge; east of the ridge it ran into the lake.

Q. Between the ridges of water I mean.

A. I think that water ran south; that is my impression.

Q. How much higher was this land here *and* the low land across 59th street—the whole land north of 59th St. corresponding to this 80, and the low land south of 59th in the 80?

A. Not much difference.

Q. No material difference at all?

A. No, sir.

Q. Are you acquainted with this land at the Park Hotel?

A. Yes, sir.

Q. Did you sell any land around the Park Hotel within 2 or 3 blocks?

A. Yes, sir.

Q. Do you know of any sales?

527 A. Yes, sir.

Q. Within two or three blocks of the Park Hotel?

A. Yes, sir; Washington, Madison, Jefferson, and Adams Sts.; I am familiar with them. These streets, I suppose, run north and south.

Q. I am asking eas- -f the railroad. Do you know of any sales there?

A. Yes, sir.

Q. Near the Hyde Park Hotel?

A. Yes, sir.

Q. Do you know of any sales between this park and the hotel in 1870?

A. I know of several.

Q. Between 54th St. and the park. Do you know of any sales from there in 1870?

A. I cannot call them to mind now, but I know there were a great many sales there; made some myself.

Q. You made sales between 54 St. and the park?

A. I think so.

Q. Between the railroad and the lake?

A. I am not positive in 1870 or not, but I have made sales.

Q. Right there, between *this* parts that I have pointed out?

A. I think so.

Q. Between 69th and the park?

528 A. Somewhere there.

Q. Do you know that tract belonged to the Illinois Central and was never sold but once? How did you sell it then?

A. Then I am mistaken in the railroad land; but in that vicinity I made sales.

Q. Where did you make sales east of the railroad and north of the Illinois Central railroad up to the public park here—this Hyde Park, right in that block? Did you make any sales there in 1870?

A. North of the Park Hotel?

Mr. THOMPSON: East of the railroad tract?

A. I don't recollect.

Mr. DUNLEVY: Did you make any sales immediately west in this 80-acre tract and east of this tract in 1870?

A. Yes, sir—well, in 1870?

Q. Yes.

A. I have a large list of property for sale right in the tract.

Q. I am not asking you whether you had any sales; I am asking you if you made any sales between the railroad and the park?

A. No, sir; I did not.

Q. You did not make any?

529 A. Not a sale; I couldn't. They asked too much for it.

Q. You tried to sell it for what they asked for it?

A. Yes, sir.

Q. Now, did you make any sales over there within a quarter of a mile of the 80 acres within that distance?

A. I helped to make sales of some property that belonged to other persons.

Q. Was it within that limit?

A. No; it was a little south.

A. And running from the north line to the south line of the tract?

Q. Yes.

A. If I do not err in my judgment, it would be about $15 per foot on Stony Island Ave. running through.

Q. That is selling them as lots, is it?

A. That is reducing the valuation that I have already given to front feet, as near as I am able to do.

Q. I will ask you what you would sell as lots?

A. What size of lots?

594 The COURT: He says $15 per front foot.

WITNESS: That would be $750 a lot.

Mr. THOMPSON: I do not ask you by the lot; by the foot is satisfactory to me; but I am speaking of selling.

A. If my computation is correct——

Q. I am not asking you what they would have retailed out in lots; I am not asking you to reduce your valuation and divide it by the number of feet, and then get at it that way; I am asking you to tell me what they would have retailed for in lots?

A. 50 foot lots, and 15 times 50 would be $750.

The COURT: You can ask him the other question now; I think he has answered your question.

Q. What would they have been worth to retail single lots—sold as single lots—what could they have been sold for? I do not mean selling them out in a lump, I mean retailing them. What could have been realized for them?

Mr. GREEN: We object to that and save the question.

The COURT: Do you mean they could all have been sold at that time?

WITNESS: My answer does not imply that. I have given
595 the valuation of property by acres.

The COURT: Do you think these lots could have been sold during the year 1870, at the prices you have stated, to persons who were able to buy them and who expected to pay for them?

A. I should think they, perhaps, might have been sold out—possibly retailed out—they might have been retailed in 50-foot lots at a somewhat higher rate than $1,200 per acre possibly, if a person were found who wanted a 50-foot lot by 500 feet deep.

The COURT: That is the question exactly, whether persons of that kind could have been found. Was there such a demand for that property at that time as would have enabled the owner of them to sell them at that rate?

A. I will say that the suggested mode of subdiving a lot 50 feet wide by 500 feet deep, or something like that, and having a convenient and pleasant frontage——

The COURT: Leave that all out. Do you know the situation? He asks you a simple question. What were these lots 50 feet front and and running back 500 feet fairly worth in cash in 1870?

596 Mr. GREEN: Your honor, you had asked him a question as to whether purchasers had been found, and I think he was going to answer that question.

WITNESS: I was going to say that the size and shape of the lot described in the question is not one that would sell advantageously. A lot 50 feet by 500 feet is good, so far as the frontage is concerned; but when you go back into the slough it would add not a great deal to the total valuation; that is, for the purposes of a dwelling house and immediate surroundings. For that purpose a lot 250 feet deep would be as good as 500.

The COURT: Taking all these things into consideration, I understand that Mr. Thompson wants your judgment about the value of the lots at that time.

Mr. THOMPSON: I mean as lots, not by blocks.

Mr. GREEN: We save an exception.

A. They might possibly be sold in single lots at a somewhat larger price than I have named; but I think the demand for them as dwelling houses would be comparatively small.

597 Q. Taking the subdivision, then, of lots 50 feet front, on Stony Island avenue, by 150 feet deep, the ordinary depth of a lot, what would they have been retailed for, or could they have been retailed for in 1870? Could they have been sold at the price you have named?

A. They might have been sold, I think, for a higher proportionate sum than the lots you described.

Q. Give us your idea of what you think they could have been sold for per front foot in 1870, retailing them out—fronting on Stony Island Ave.

A. It is very difficult for me to answer that question, because I have so little information as to any demand for building lots on that fronting on Stony Island avenue at that time. I do not remember whether there are any house- there or not.

Q. Cannot you answer the question?

THE COURT: Put an estimate in one way or the other, if you have any judgment about those lots.

A. I think a lot 50 by 150 might perhaps have sold there, presuming it to be on the ridge, at $300 or $400, if any one—I
598 will not qualify it. I was going to say if any one wanted to buy it it might have been sold for $300 or $400.

The COURT: Do you mean to say you think they were worth that?

A. Well, if it comes to a question of market value, and I understand your honor to rule that is the question.

The COURT: Yes.

A. I do not think they would have sold for that. They might have been sold for $300—that is, the market value might have been $300.

Mr. THOMPSON: I am speaking of 50-foot not 45-foot lots. You make it now $6 per front foot; is that your judgment, Mr. Peabody?

A. Let me figure a little.

Q. You had in your mind, I guess, a 25-foot lot?

Mr. THOMPSON: Your decision, your honor, seems to me to limit us to the intrinsic value.

The COURT: If a man is willing to pay a price for speculative or any other purpose you are entitled to it, it does not matter for what purpose he bought it, Mr. Thompson.

Q. Have you made up your mind as to whether $6 per front foot was your estimate?

A. I will adhere to that as may estimate.

599 Q. Did I understand you to say you gave this property in your valuation which you have made here all the surrounding benefits, the same as the other property here?

A. So far as I know or appreciate them or understand them.

Q. That is, you have given them the benefit of the park. Your valuation would be precisely the same of property on the other side of the street, wouldn't it?

A. As to the land?

Q. Right opposite.

A. As to this 40-acre tract?

Q. No; this 80-acre tract lying on Stony Island Ave.; you know of no difference between that and the 80 acres lying right across the street from it?

A. No material difference, supposing the topographical difference is the same.

Q. That is what I mean on the supposition.

A. Supposing the distance was the same, and the topography the same?

Q. Stony Island Ave. would be the road to that station; you remember how it lies there?

A. Yes.

600 Q. And the valuation is the same valuation you would have given for the land on the same day lying east, it being of the same character?

A. Yes; I don't think I should make any material difference as to this 40 acres.

Q. Now, what in your judgment was the difference in value at that time between this 80 acres and the land lying immediately north of the park, for instance?

Mr. STORRS: I object.

Mr. THOMPSON: Well, I will ask you this question: What in your judgment was the difference between the land lying immediately east of this across Stony Island avenue of the same general character and this land here (indicating); what is the difference in 1870 between these 2 pieces.

The COURT: The land in controversy and what?

Mr. THOMPSON: I mean the land opposite the land in controversy, and this (indicating).

Mr. STORRS: That is objected to.

Mr. GREEN: Such a question as that does not go into the

601 record properly; he says, "Between the land opposite and this."

The COURT: How would that tend to show the value of the land?

I understand you are asking him now to make a comparative estimate of the land outside of the park land.

Mr. STORRS: Yes, sir.

The COURT: Would that go to make the witness show the value of the land?

Mr. THOMPSON (to witness): I do not ask you to name any amount, but I ask you what in your judgment was the difference in value between the property lying immediately west of Stony Island Ave., and immediately west of Stony Island Ave. and opposite this property and the property lying immediately north of the park.

Mr. STORRS: That is objected to as not proper form to put the question.

The COURT: Ask him which was the more valuable.

Mr. THOMPSON: Which was the more valuable in 1870?

A. I do not know the topographical character of the 2 pieces at all.

Mr. THOMPSON: This piece being lower than that?

602 Mr. FULLER: I object to it.

Mr. THOMPSON: The court says he can answer.

The COURT: You can save your exception.

Mr. THOMPSON: Add to my question the fact that this piece here (indicating) is two-thirds, and lower even than the land in question.

A. And how about the other piece?

Q. The other piece being a little higher, if anything, than the land in question, but not materially so.

Mr. STORRS: That is as to the value of Aug. 27th, 1870. If they are both outside I certainly object to it.

The COURT: He may answer, and you save an exception.

A. I will say to the court and jury I have never examined either of those tracts, so far as I am aware of, in reference to ascertaining their value, and I cannot make an estimate satisfactory to my own judgment of the comparative valuation of the 2 tracts.

The COURT: You cannot answer the question—is that what you mean? If you cannot, say so.

A. I choose to give my reason why I cannot. I have made no examination of the property.

Mr. THOMPSON: Never mind. Have you made an examination of this property?

603 A. I have not made an examination of it—of either piece.

Q. Did you ever make an examination of that piece lying west of Stony Island Ave. and north of the Midway Plaisance?

Mr. STORRS: I object to that, as having nothing to do with this case.

The COURT: He has a right to say how far he is acquainted with the property in that neighborhood. He has given an estimate, and they say he is not acquainted with values down there.

WITNESS: From this map I do not identify the tract as one I have examined.

Mr. THOMPSON: What, in your judgment, was the difference in values there between August, 1870, and May, 1872, in that location?

Mr. GREEN: Where—inside or outside the park?

Q. Answer either inside or outside. He says he makes no difference in regard to values. He has given you the value of outside property.

Mr. STORRS: But the question of values in 1872 is an improper question before the jury.

Mr. THOMPSON: I will ask you what, in your opinion, was the difference in value between Aug. 27th and May or April, 1872, in that locality, right in that neighborhood?

Mr. GREEN: That is objected to.

The COURT: That is equivalent to asking him whether the price rose or fell.

604 Mr. FULLER: The proper question is as to whether there was a rise in the market, but he goes further; he asks what is the difference, which, of course, involves a valuation.

Mr. STORRS: It is a constant attempt to evade your honor's rule.

Mr. FULLER: It is an attempt to establish a fact from which the jury can draw an inference, but the real question is to say, Has the market risen?

The COURT: I think he has a right to let the jury see to what extent he was familiar with the property down there—with the value of the property—but, of course, ought not in this way indirectly to make a comparison of the property in question.

Mr. THOMPSON: I am not doing that. This man has testified that there was no difference in 1870 between the value which he set upon this particular property in question and the property lying outside the park immediately across Stony Island Ave., provided its topographical character was the same.

Q. Did it advance?

Mr. STORRS: From 1870 to 1872?

Mr. THOMPSON: Did it advance any?

A. My recollection is there was a general advance in prices, including that district of territory.

Q. Now, then, how much did it advance in that particular
605 neighborhood between those times?

A. I do not think I could say that with any accuracy.

Q. Did — advance 20 per cent. between those times?

Mr. GREEN: That we object to.

A. I could not give you the amount of advance. The tendency was to advance.

Mr. THOMPSON: Give us some idea of your opinion. Did it advance a million per cent.?

A. I should venture to guess not.

Q. Did it advance more than one per cent.?

A. I should judge it may have done so.

Q. Give us somewhere about your idea; you have an idea?

A. I have not any idea—a definite idea.

Q. I do not ask you for a definite idea.

A. I could not give an indefinite idea—a worthless idea—I have no definite idea of the rate of the advance.

Q. Then you have no idea at all?

A. I have said the facts and you can draw the inference yourself.

Q. Let me have the facts.

A. I have stated the facts, and they are that in my judgment and in the matter of history of real estate in that neighborhood there was an advance.

Q. Of what per cent.?

A. I could not tell you.

Q. Can you get anywhere near it?

A. I do not think I could.

Mr. STORRS: That ends the worsted.

606 Mr. THOMPSON: Do you know if there was any advance from February, 1869, to August, 1870, in that neighborhood?

Objected to; overruled; to which ruling of the court the plaintiff, by *its* counsel, then and there excepted.

A. I should think there was.

Q. You should think there was; to what extent?

A. I cannot give you the extent. I should think it was a rising market from 1871 to 1872, and maybe later.

The COURT: I think in cross-examination, inasmuch as he has given his judgment, you have the right to ask him whether he has included the general advance of property.

Mr. STORRS: He has said that he did on direct examination.

The COURT: Then they have a right to cross-examine on that point. You are right, then; I will withdraw what I said. Go on.

Q. Did property, in your judgment, in this neighborhood, at any time within 2 years of the time you have given your valuation for, and examination by you for the purpose of determining values—did the property, I mean, have an examination by you for the purpose of determining values?

A. The property in this vicinity? (Indicating.)

Q. Yes, sir; in this vicinity. (Indicating.)

607 A. There was a property a mile west—about a mile west of this Stony Island Ave., and about on a parallel with the land in question—which I had occasion to examine the value of about 1870.

Q. Did you have occasion, in 1872 for instance, to make an examination as to the value of the property lying immediately west of Stony Island Ave., and south of 58th St., between 58th and 59th?

A. I do not think I can speak from recollection, unless you can give me some clue to the ownership at that time; something by which I can identify it. I cannot identify it from this map.

Q. For a man by the name of Enigh, did you examine it?

A. I never saw his tract to examine it, that I know of, until recently.

Q. Did you put any estimate on that?

Mr. STORRS: When?
Mr. THOMPSON: In 1872.

Objected to.

Mr. THOMPSON: I desire to say that in April, 1872, there was a loan made on the piece of property lying immediately fronting on Stony Island avenue, the south line of which was 59th St., which is the north line [of] our property, and that this witness was the
608 trustee named in the deed to secure the loan, and desire to show what that loan was, for the purpose of discrediting his valuation which he has now given.

The COURT: I will sustain the objection.
Mr. THOMPSON: I save an exception.

Q. As I understand you, you are not quite able to give the values of this property because you have not examined it; is that correct?

A. You have asked me of the comparative values of a piece north of the South Park, and of a piece west of the South Park, which, so far as I recollect, I have never examined.

Q. I will ask you when you examined the property in question in this suit first?

A. The first time I examined it, in the proper sense of the word, was about one year ago, at the time of the former trial of this case.

Q. For the purpose of testifying in that case?

A. For the purpose of forfing my opinion.

Q. When was the second time?

A. Prior to that time, when I made a special examination of this property. I examined property 2 or 3 years ago directly south of it, and a portion of it having the same general confirmation as this has.

Q. Then you did not examine any of this down there prior to 3 years ago—is that correct?

609 A. I had made no examination of it. I had seen it, but I made no examination of it prior to three years ago.

Q. Do you know of any sales in 1870 within a half mile of this property, either inside of the park or outside of the park.

A. I don't recall any sale that I knew of as occurring within that year within a half mile of the park.

Q. In putting the value upon this lake shore piece you say you valued it from an examination which you made and as you found it last year; is that correct?

A. I valued it—yes, from general appearances as I found it as it stood.

Q. As you found it last year?

A. As I found it.

Q. What was the condition of real estate market in 1870 in reference to speculation?

A. There was considerable activity in it in reference to speculation.

Q. Wasn't it very active at that time?

A. Yes; generally it was very active, more so at some times than at others, but generally it was very active.

Q. Wasn't it particularly so in Hyde Park?
A. Yes, there was great activity in Hyde Park.

DENNIS E. MOREHOUSE was then called as a witness on behalf of the defendant, &, being first duly sworn, testified as follows:

Direct examination by Mr. FULLER:

Q. What is your name?
A. Den-is E. Morehouse.

610 Q. How long have you resided in Cook county?
A. Since 1857.
Q. What has been your occupation?
A. Civil engineer.
Q. In the employ of——
A. The Illinois Central R. R. Co.
Q. All that time?
A. Yes, sir.
Q. Do you know the length of the north pier—that is, the pier north of the river from the east shore line of 1855? If so, please give it.
A. It is about 3,700 feet.
Q. What was the length of the north pier in 1870? The summer of 1870?
A. 600 feet less than it is at the present time.
Q. About 3,100 feet, then?
A. Yes, sir.
Q. What has been the accretion near the north pier since 1869?
A. It has been very slight, sir.
Q. During your experience with the Ill. Central R. R. have you noticed the effect of Lake Michigan upon the south shore of the lake?
A. I have.
Q. Where do you reside?
A. At Kenwood, in Hyde Park.
Q. How long have you resided in the village of Hyde Park?
A. 6 years, I think.
Q. For how long a period of time have you had experience as to the operations of Lake Michigan upon the south shore?
A. Since 1857.

611 Q. Where did you reside after 1857?
A. I resided in Chicago, on Michigan and Prairie Ave., south of 26th St.
Q. Did you reside at Hyde Park at any other time?
A. Not until within about 6 years ago.
Q. But your experience about the shore has been derived from your connection with the railroad company?
A. Yes, sir.
Q. When did the wash or erosure of the south shore commence?
A. I should say it had begun when I came here in 1857.
Q. Did it go on?
A. Yes, sir. There has been a steady erosure of the shore until about 8 years, I should say.

Q. Until within about eight years?

A. Yes, sir, and at some points that action is still going on. I refer in speaking of the shore thus far to the shore between the Chicago river and 53rd St. at Hyde Park. The Illinois Central leaves the lake shore at about 50th St., and the lake shore north of 50th St. is the shore that I am specially familiar with and to which I refer.

Q. According to your best recollection, when was the parallel breakwater of the Government south of the Chicago river commenced?

612 A. It was commenced either in 1869 or 1870.

Q. If in 1870, in the spring?

A. Yes, sir; it must have been commenced in the spring.

Q. That is the parallel breakwater?

A. Yes, sir.

Cross-examination by Mr. THOMPSON:

Q. I understand that you have not taken any notice of any action of the shore south of 50th St.?

A. Yes, sir; I have taken notice of the action of it south of 50th St.

Q. When did it commence to cut it south of 50th St.?

A. I do not know that I could name the time now.

Q. Had it been cutting it down south of 50th St. from 1857 down to 8 years ago?

A. I could not say with regard to 1857. Previous to eight years ago, I know there was an erosure action south of 50th St.

Q. What time did that commence?

A. I could not say; I am not conversant with the shore line enough to fix that time.

Q. You do not know when it did commence?

A. No, sir.

Q. Prior to the time that it did commence had it accumulated there or not, south of 50th St., a great deal of accumulation?

A. What portion of the lake do you refer to—how far south?

613 Q. South of the Hyde Park Hotel; commence at 54th St. and go south.

A. No, sir; from 50th St. to the Hyde Park Hotel the shore has been washing away ever since 1857 or 1858, I should say.

Q. Do you know where the Hyde Park lock-up used to be?

A. I do not by that name.

Q. What?

A. I think not.

Q. Don't you know it was right there on that shore?

A. The Hyde Park lock-up?

Q. Yes; the jail.

A. I do not remember the structure.

Q. Do you remember when the 51st-St. sewer was put in?

A. I could not tell the year.

Q. Do you remember the fact?

A. I remember that a sewer had been constructed at 51st St.; at the time I knew of it, but I could not tell what year.

Q. You saw it going in?
A. Yes, sir.
Q. Now, at the time that went in was not the shore making right for the park south of that sewer?
A. I do not remember in regard to that.
Q. You do not remember in regard to that?
A. No, sir.
Q. Then you don't remember when the wash did commence?
A. I know that shortly after I came here the park north of
614 hotel began to wash away previous to 1860.
Q. Do you know what action was had upon the property south of 59th St.?
A. I know there has been a washing away of that shore, but when it began I am unable to say.

Redirect examination by Mr. FULLER:

Q. Was not there a protection put in there at that park near the hotel?
A. Yes, sir.
Q. Now, so far as your experience as an engineer for the railroad Co. is concerned, it was confined to this side of 50th St.; yet you observed the shore below to some extent, didn't you?
A. To some extent.
Q. How far below?
A. I have observed the shore as far south as the point where the canal enters the lake, at 59th St.
Q. And your recollection is, the shore washed away as far south as the Hyde Park hotel; what is your recollection between that and 59th St.?
A. There has been a large amount of land washed away there.
Q. When did you first observe that?
A. I could not name the year; it was a good many years ago.

Gen. CHARLES FITZIMMONS was then recalled on behalf of the defendants, & testified as follows:

615 Direct examination by Mr. FULLER:

Q. Have you visited the land north of the lake?
A. I did, sir.
Q. When did you do that?
A. On Sunday last.
Q. With Mr. Foster?
A. Yes, sir.
Q. A mile north of Lincoln Park?
A. Yes, sir; we examined the shore line and found some 17 or 18 fresh constructed jetties there.
Q. Had there been any accretions there?
A. Some slight accretion in and amongst and around the jetties; fresh sand, evidently, had lodged there, and also had lodged continuously for 400 or 500 feet north of those jetties as well.

Q. Was that lodgement of the sand there occasioned by the existence of the jetties?

A. I do not think it was; my opinion was that it was caused mainly by an outer breakwater—an old breakwater, which exists parallel to the shore line and masks these jetties from the lake. It continues from a point south of them to a point north of the jetties about 200 feet. It is the old breakwater, the top of which is very much rotten and decayed, and there is an indication by the waves that it has a substructure, which effects the shore. I think that a special
616 lodgement of sand among those jetties is mainly from that breakwater.

Q. Any other cause?

A. The movement of sand on the shore there. The recent movement is formed, in my opinion, by the operations of building a breakwater in front of the marine hospital, about 2,000 feet further north. It has been a disturbing cause, and shows it there. It must be the cause of the formation of the sand in a lake storm.

Q. Why do you not attribute the accretion to the jetties?

A. They could not have any serious effect on sand. They are simply little piers running out. Their tendency, in my opinion, is to make the water deeper in front of them. They are no protection to the sand around there now. In the direction of the lake, in the event of a storm, the sand would be washed away as readily as if they did not exist. They offer no protection to sand remaining there; therefore they can have no effect on the sand remaining there.

Mr. GREEN: What was the consistency of it?

A. Fine sand.

Q. Damp?

A. The water was very low Sunday, and I saw the highest point of the sand was two feet six inches above the water, and it was moist.

Mr. FULLER: How far is the marine hospital from this
617 place you speak of; is it north or south?

A. About 2,000 feet north.

Q. Where did this sand come from?

A. It came from the north.

Q. And was there any washing away above this, near the marine hospital?

A. Yes; immediately at the end of either breakwater; there is a portion washing away of the shore line.

Q. At the end?

A. South of the marine hospital and north of this point.

Q. B- what extent?

A. To an extent in area about the same as that formed around these jetties.

Cross-examination by Mr. THOMPSON:

Q. Did you ever examine that place before?

A. I have been frequently along that shore during the last 16 years.

Q. Did you ever examine it since the jetties were put there until last Sunday?

A. No, sir; I did not.

Q. Did you examine it immediately before the jetties were put there?

A. No.

Q. Do you know how much has accumulated since the jetties were put there?

A. The land has——

Q. Answer my question; do you know how much has accumulated since the jetties were put there?

618 A. I assume there was no land there when the jetties were put there?

Q. How long are they running out into the lake?

A. They are about 50 feet long.

Q. And the land is——

A. Maybe up-flushed with the end of the jetties.

Q. Up-flush with the end of the jetties?

A. Yes, sir.

Q. How much front is occupied by those 16 jetties?

A. 600 feet.

Q. How far does the land accumulation extend north of it?

A. It is on the same line—on a straight line for at least 1,000 ft. north—400 feet further north. Then there is a projection still further north, where there are no jetties or anything else.

Q. Was there any accumulation south of the south jetties?

A. No; south of the south jetties?

Q. Yes; south of the south jetties?

A. There is a high fence or pier, and it is immediately on the street; there is a street.

Q. Is there any accumulation right there?

A. It looks as if the sand had been dug out there.

Q. Is there any accumulation there?

A. No, sir?

A. G. CLARK was then called as a witness on behalf of de-
619 fendant, [and], being first duly sworn, testified as follows:

Direct examination by Mr. GREEN:

Q. What is your name?

A. Allen G. Clark.

Q. Where do you reside?

A. Near S. Chicago.

Q. In what town?

A. Hyde Park.

Q. How long have you lived in Hyde Park?

A. Something over 20 years.

Q. You resided there, then, from about 1867?

A. I think it was.

Q. Continuously?

A. Yes, sir.

Q. Have you ever had any dealings in land since you have been in Hyde Park?

A. Yes, sir.

Q. What was your business from 1863, say, to 1870?

A. I have been dealing in real estate most of the time since I have been in Hyde Park, commencing about 1865.

Q. How long dealing in real estate?

A. Since 1866.

Q. As a broker?

A. Yes, sir; buying and selling for myself and others.

Q. You were buying and selling for others?

A. Yes, sir.

Q. Have you bought and sold for yourself during that period?

A. Yes, sir.

Q. Whereabouts in Hyde Park were you specially dealing, say, from 1867 to 1870?

A. Most of my transactions were in the neighborhood of
620 Woodlawn station.

Q. That is in the neighborhood of——

A. 63rd St.

Q. 63rd St. and the Illinois Central track?

A. Yes, sir.

Q. Just state some of the properties that you were connected with during those years, referring to this map that you see hung up here of the S. E. quarter of section 14 and the N. E. quarter of section 23.

A. I bought for myself and others the west one-half of Bowen's subdivision.

Q. What is now Wait and Bowen's subdivision?

A. Yes, sir.

Q. And what other properties have you had to do with here?

A. The 40 acres next north of that I sold at one time.

Q. Just north of 63rd St.?

A. Yes, sir.

Q. Where did you live at that time?

A. I lived just south of 63rd on Woodlawn Ave.; Woodlawn Ave. is the west street.

Q. South of 63rd on Woodlawn Ave?

A. Yes, sir.

Q. In 1870 were there many improvements around there at that time?

A. There were some; yes, sir.

Q. Of what character?

A. Some dwelling-houses west, a station, a school-house, etc.

Q. Take across the tract, on the west side of the tract; what were the nature of the improvements in 1870?

621 A. I should think there were about 3 or 4 houses there.

Q. Are you acquainted with what is called the Phillips tract?

A. Yes, sir.

Q. Have you ever been on it?

A. A great many times.
Q. Were you ever on it prior to 1870?
A. Yes, sir.
Q. About how many times?
A. Very often. I used to drive that way very frequently.
Q. It was quite near your own residence, wasn't it?
A. Yes, sir.
Q. Were you acquainted with the values of property in that vicinity in 1870?
A. Yes, sir.
Q. Do you remember about the time the park act was passed?
A. I do.
Q. Do you remember the agitation that preceded the passage of the act?
A. Yes, sir; very well.
Q. What, in your opinion, was the fair cash market value on the 27th of August, 1870, of the west 80 of the Phillips tract, now in controversy?
A. Do you mean take it as an average?
The COURT: Yes.
A. About $750 an acre.
Mr. GREEN: You average the high and low land together?
A. Yes, sir.
Q. $750 an acre?
A. Yes, sir.
Q. Do you remember the shore piece in '80?
A. Yes, sir.
Q. Now, skipping the middle 80—that is, the 80 next east—the 80 you have testified about?
A. Yes, sir.
622 Q. The shore piece; what was your opinion of the fair cash market value of the shore piece on the 27th of August, 1870?
A. About $400 an acre, I should say.
Q. Was there any change in the value of that property from 1867, say, up to 1870?
A. Yes, sir; it advanced.
Q. What was the cause of the advance?
A. The general agitation of the park scheme had much to do with it.
Q. In giving your valuation as of the 27th of August, 1870, have you taken into consideration the agitation of the park scheme and other causes?
A. I did, sir.
Q. What were the other causes that you say had a tendency?
A. There was a general rise in values in that town an- a general improvement.
Q. Do you give the land the benefit of that?
A. Of everything; yes, sir.
Q. In the estimate that you have given?
A. Yes; I do.

Cross-examination by Mr. THOMPSON:

Q. In making that estimate which you have given I understand you to say that you have included in it what you think the land appreciated by the general agitation for park purposes?

A. Yes, sir.

Q. And also the general rise that property took from 1868 to 1870?

A. Yes, sir.

Q. It did rise very rapidly, didn't it, through that time?

623 A. The rise was about 1869.

Q. Prior to the passage of the act?

A. Immediately after the passage of the act.

Q. And have you given this property the benefit of that?

A. I think I have; yes, sir.

Q. And then it continued to rise until August, 1870?

A. I do not think it rose very much the next year. I think it got its value immediately after the park was located there. I do not think it took on a much greater value after that.

Q. You think it remained at about one thing?

A. It had some rise after that in the immediate vicinity.

Q. The land in the immediate vicinity did go on rising, didn't it?

A. Not very much.

Q. But what rise it did get was from general advance in values in property rather than from the effect of the park?

A. It got the effect of the park at once My recollection is the best sale there was in 1870.

Q. Did property sell as high in 1870 as at any other time?

A. I think so.

Q. Now, the advance the park gave the property, you think it all took place immediately after the passage of the act, or shortly before?

624 A. I would not say all, but I will say it accumulated very soon.

Q. I don't mean the improvement of the park; I am speaking of its location—so far as the location of the park is concerned. The property took its advance during the discussion of the park scheme and the passage of the park act. It had acquired then about as much advance as it took by the location of the park?

A. Yes, sir; its best value.

Q. And the little advance that occurred from that time up to 1870 was by reason of the general appreciation in property?

A. Substantially that.

Q. That is your theory?

A. I think so.

Q. Now, Mr. Clark, have you given us, in this valuation which you have put upon this west 80 acres—have you given the advantages of the park?

A. I have, sir.

Q. Precisely as you remember it?

Mr. GREEN: He did not say the location of the park; you are putting words into his mouth that he didn't say.

Mr. THOMPSON: You had some dealings immediately in that vicinity, didn't you?

A. Yes, sir.

Q. I wish you would look at this map (indicating;) this is the property in question?

A. Yes, sir.

Q. This is Wait and Bowen's subdivision? (Indicating.)

A. Yes, sir.

625 Q. You had some dealings in 1870 right in that subdivision, didn't you?

A. Yes, sir.

Q. You sold some lots there?

A. Yes, sir.

Q. Did your wife sell a lot there?

A. Very likely.

Q. Ange R. Clark—is that your wife's name?

A. Yes, sir.

Q. Did you sell that for her? (Indicating.)

A. I did.

Q. Now, as between this property lying along here on Stony Island Ave. and that (indicating), is there any material difference in the height of the property, taking Stony Island Ave. front and Wait & Bowen's subdivision?

A. Not very much. You take the best land in the 80——

Q. I mean the land lying on Stony Island Ave. and this (indicating) is the same, isn't it?

A. Yes, sir.

Q. You made the sale for your wife on the 31st day of May, 1870, didn't you?

A. What is the property?

Q. Lots 12 & 13, in bl'k 1, in Wait & Bowen's subdivision.

A. It is an inside lot; who did I sell it to?

Q. Martha M. P. Bartlett. Did you sell that property?

A. Yes, sir This property you are talking about now is not like the property in the park; it is differently situated.

The COURT: What kind of a sale was it?

A. A regular sale, for cash and on time, I suppose.

Mr. THOMPSON: I will ask the question, and let the court

626 rule on it. What did you sell those 2 lots for?

The COURT: Describe their location.

A. He says the property he is asking me about—the park—is some distance away from the station with no improvements about it whatever—no house near it whatever—except some tumble-down house that stood in the park. But this property that I talk about now stood near the station, and a good school-house.

The COURT: In 1870?

A. Yes, sir

Q. There was no house on Wait & Bowen's subdivision in 1870?

A. No, sir; just west of it.

Q. Was there one there in 1870?

A. No; but just west of it there were several, and a school-house.

Q. Are they any nearer this Wait & Bowen's subdivision than they are near this lot that you have testified to?

A. Yes, sir; they are.

Q. Will you look and see where this piece of property that you have been giving your opinion about is?

A. Yes, sir.

Mr. GREEN: 63rd St., isn't it?

A. Yes, sir.

Mr. THOMPSON: Where are those improvements?

A There are none on the west side of the tract.

Q. Were not there improvements on Robertson's subdivision?

627 A. Not very much.

Q. Are all those the improvements you have in your mind?

A. They were. There was about 3 houses there.

Q. Whereabouts was the nearest house to this block, how many blocks away?

A. There was one ten blocks west.

Q. Of Woodlawn Ave.?

A. No; right at Woodlawn Ave.

Q. On the west side of Woodlawn Ave?

A. Two blocks away.

Q. What is the size of the lots?

A. 50 feet front by 160 feet deep.

Q. How many to the acre?

A. Including the streets, there are about 3 lots to the acre; that is about what it would be.

The COURT: Now, you want to show that he sold two lots 50 by 160 feet at a higher rate.

Mr. STORRS: Where?

The COURT: I mean outside, at a higher rate. Now, it costs something perhaps to subdivide, and there is some loss in subdividing, but you may answer the question. Give your reasons for the difference between those two.

Mr. GREEN: We wish to take an exception.

WITNESS: I think it was $20 a front foot.

Mr. THOMPSON: Cannot you give a lump price for the whole thing?

628 The COURT: That is simply a calculation; you can make that. Now, state (to witness) wherein this differs from the property in controversy.

A. This property on the park front is entirely unimproved and simply has streets there. On the other side we have a nice little place, and our school-house was three blocks from the station. And generally the character of the land was better than the general character of the land that he is talking about, when it was subdivided and these improvements made, a station-house built, and I calculate it would be worth considerable more than that property,

Q. I will ask you to give the exact figures that you got for those lots.

(Objected to as immaterial.)

The COURT: He says $20 a foot.

WITNESS: I feel very sure that is it. I have no doubt but what the record is correct.

Q. He points out that (indicating record), and that record has not got it?

Mr. STORRS: Bring it in.

Mr. THOMPSON: I will simply ask you to verify your figures.

A. I say I am right; that is $22,000.

Q. Now, I will ask you if you made a sale of 2 other lots in block 3?

A. Yes.

Q. Lots 7, & 8, in block 3?

629 The COURT: I will allow this in, simply upon the theory that he thought this property and the outside property was the same.

Mr. THOMPSON: I said the price of those two lots—lots 6 & 7 in bl'k 3.

A. Yes.

Q. You sold that to Martha E. Bartlett on the 21st of June, 1870, didn't you?

A. I think so.

Q. What was the price that you received? Was that a regular sale?

Objected to; overruled; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

Q. What was the price that you received for those lots?

A. I think $2,500.

Q. Are those the same size lots?

A. Yes, sir; I think they were.

Q. I will ask you to verify your figures on both of those lots afterwards.

Redirect examination by Mr. GREEN:

Q. Do you say that Wait & Bowen's run three lots to the acre?

A. About that. I think you will find it by figuring it up there. (Indicating.)

Q. That is about 150 feet to the acre, taking the streets?

A. Including the streets and all.

Q. These blocks are 6-and-$\frac{3}{4}$-acre blocks, are they not?

A. Yes, sir.

630 Q. Now, take the last sale that you have mentioned, lots 6 & 7, of block 3, in Wait & Bowen's subdivision, where is lot 7 situated in reference to streets?

A. On the corner of 63rd and Woodlawn Ave.

Q. And where is block 6 situated?

A. Right adjoining it on the east.

Q. How does that compare in character with the rest of the Wait & Bowen's subdivision?

A. It is the best 100 feet in the whole subdivision.

Q. It is the best 100 feet in the whole subdivision?

A. I consider it so.

Q. And how does that compare in character with the land in Phillips' subdivision?

A. You could find some places where you coul- have cut a corner that would look as well as that.

Q. How would it compare with the low land in Phillips' subdivision?

A. I consider that practically worthless.

Q. In making your estimate, you consider that practically worthless?

A. Yes, sir.

Q. Mr. Clark, do you make any difference in the value of lands sold by the acre and lands sold by the lot?

A. I do.

Q. How much difference?

A. There is at least 100 per cent. difference.

Q. Why?

A. Because, when you come to subdividing it, and retailing it out, you have got a long job on hand. I do not care much
631 where you make your *make your* subdivision. I have had some experience in that kind of business within the last ten or 12 *business*, and I guess I ought to know.

Q. Did this land rise in value any from the time of the passage of the park act up to the time you sold it by reason of the location of the South Park?

A. I think it did.

Q. You think it did?

A. Yes, sir.

Q. About how much do you think it rose in value on account of the location of the park?

A. Probably 50 per cent.

Q. When did you sell this Wait and Bowen's subdivision?

A. What do you mean?

Q. I thought you said you negotiated the sale of this?

A. I bought it for myself and others.

Q. When?

A. In the latter part of 1867 or the beginning of 1868.

Q. Was that tract affected by the agitation of the park scheme or the agitation of the location of the park?

A. Yes, sir.

Q. Was there any advance after the location of lands outside the park?

A. There was; yes, sir.

Q. Well, then, as I understand you now, there were two advances attributable to 2 different causes of that land?

A. Yes, sir.

Q. One from the agitation of the park scheme and one from the location of the park?

632 A. Yes, sir.

Q. That is, the first advance, as I understand you, was general all over the lands?

A. Yes, sir.

Q. Now, when the second advance from the location of the park, what lands did that affect?

A. The lands outside the park, of course?

Q. Did you in giving your valuation on this land inside the park give it an advance in value on account of the location of the park?

A. I think I did to a certain extent.

Q. It was part of the tract, wasn't it?

A. Yes, sir.

The COURT: He has said that before.

Mr. GREEN: What I mean by location, I refer to the definition of the park lands.

A. I understand.

Q. The latter part of 1868, I understand you to say you purchased this Wait and Bowen's subdivision?

A. I think the original contract was in the latter part of 1867, and my recollection is it took about 6 or 8 months to close up the trade, and it ran along into 1868 to a final close.

Q. What price did you pay for the Wait and Bowen's subdivision by the acre when you purchased it?

Mr. THOMPSON: I object; he bought it in 1867.

Mr. FULLER: It ran along to 1868.

Objection sustained; exception.

WITNESS: I am sure we commenced in 1867, but it was
633 some 6 months after I first made the contract that he got the land; we had some trouble about getting the land.

The COURT: Was it before or after the park agitation?

A. The park agitation had commenced at that time.

The COURT: Did the value of the property increase?

A. I don't think it did to a great extent.

Mr. GREEN: If your honor please, it seems to me they have gone into the actual value of these outside lands, and it has arrived at a point now when it is proper for us——

The COURT: Well, if they offered his evidence simply for the purpose of showing relative value it would not be a competent question; it is not similarly situated; it is not similar property; the property in controversy he appraised at $750 an acre, taking it all, high and low together; and then you institute a comparison that it is property subdivided into lots without any low land on it, but you said you did that to cross-examine him to show——

Mr. THOMPSON: That is all.

Mr. FULLER: Not to establish it as evidence.

Mr. GREEN: We have to take your honor's ruling on it, but we will watch and see what they do it for.

634 Mr. THOMPSON: I did it to weaken this witness'es evidence before the jury.

Mr. GREEN: Now take the other two lots; these 12 & 13 in Wait & Bowen's subdivision, in block 1, what kind of land was that, swampy or high land?

A. Good dry ground.

Q. How did that compare with the low land in Phillips' subdivision?

A. It was much better than any of the low land there.

Q. How did it compare as being saleable with any of the Phillips subdivision?

A. Much better than any in question.

At which point court took a recess till 2 p. m.

DECEMBER 10—2 p. m.

The cross examination of the witness, A. G. CLARK, was continued by Mr. THOMPSON, as follows:

Q. Will you make any correction as to the amount of the second sale you spoke of?

A. That sale of lot- 6 and 7, in block 3, should be $3,000 instead of $2,500.

Mr. GREEN: I should like to ask Mr. Clark a few more questions, if your honor will permit me.

Q. Do you know when Waite & Bowen's subdivision was made?

A. I think it was in 1868.

Q. Within the next two years do you know how many lots

635 were sold out of that subdivison?

Objected to.

Mr. GREEN: The object of the inqury is to illustrate what has been already testified to as a matter of fact by a fact, namely, about raising the retail price when they want to sell out a subdivision. I propose to show by him in that two years how many lots had been sold out of that subdivision, and then I proposed to draw the inference how long at that rate it would take to sell out that subdivision.

The COURT: I- might also be admissable as tending to show to what extent there was a demand for property at that time.

M. THOMPSON: If he confines it to 1870 I have no objection.

The COURT: It runs up to 1870.

Exception by plaintiff.

A. I do not think it exceeded forty lots.

Q. Did you include in that the summer of 1870, when these lots were sold?

A. Yes, sir; these sales you have been asking about.

Q. Do you know how many lots there were in the subdivision?

A. About 200.

Q. It is put down here 227 lots.
A. That is probably right.
Q. You stated to me you would like to make an explanation in reference to how you arrived at the value you have given of
636 this Phillips subdivision, having still in your mind these sales?
A. I harmonize them in this way, the high ground of Phillips' subdivision.

Mr. THOMPSON: Is this proper?

Re-direct examination

Mr. FULLER: The witness himself asked me if he could have the privilege of making this explanation.
A. The land in Phillips' subdivision, high ground, I estimated $1,500 an acre, which is comparatively like this in the Woodlawn subdivision. When you subdivide a tract of land you add 100 per cent. at least; that makes that value in the Woodlawn subdivision $2,000; then if you have a subdivision and are selling out a corner, every real estate man adds one-third to fifty per cent. for its being a corner, and in that way you get this apparent excessive value of this 100 feet that was sold at $3,000; in addition to that, it was an extraordinary corner, with fine natural old trees and a good many new ones I set out. That, I think, will cover the question and show why there is such a difference in the value.
Mr. THOMPSON: How many of those 40 sales took place in 1870, instead of 1868?
A. I have not looked it over carefully, but I should think one-half of them.
Q. Not more?
637 A. Possibly more. This sale was not an original sale from the subdivision; it had been resold.
Q. How many transactions were there in that?
A. In this one sale?
Q. How many sales altogether?
A. Not exceeding forty lots; the resales might reach to more than that, because some of them were resold, as in this case. I bought out of the subdivision and then sold it to Barker, but I mean not exceeding 40 lots were sold out of the subdivision from the original.
Q. That does not include resales?
A. It does not include resales.
Q. You say you have noted the difference here between the Phillips tract and this; you have already said there was no house on Bowen's subdivision in 1870?
A. Yes, sir.
Q. I will ask you how many houses there were in the subdivision west of it?
A. I should think about ten houses.
Q. In the subdivision west?
A. Taking that neighborhood right there.
Q. How far did you go?

A. Within two or three blocks—round here by this school-house.
Q. Is this a school-house?
A. That is represented as a school-house.

GEORGE H. ROZET was then recalled on behalf of the defendant, and his examination was continued, as follows:

Mr. GREEN: I think you said that you resided for a couple of years in Hyde Park?

A. Yes, sir.

638 Q. Ever deal in real estate in Hyde Park?

A. Yes, sir; largely.

Q. When did you first commence to deal in Hyde Park property?
A. In 1866.
Q. Will you give us a description of some of the pieces of property that you have handled in Hyde Park, either for yourself or others, giving them in the neighborhood of what is now the South Park improvements, commencing up north?
A. A tract of 107 acres, southeast quarter, section 11.
Q. Give us something nearer the streets.
A. Known as Eganville.
Q. That is east of the west division of the South Park?
A. Yes, sir.
Q. How large a park?
A. 107 acres.
Q. What did you have to do with it?
A. I was agent for its sale.
Q. Did you sell it?
A. Yes, sir.
The COURT: When was this?
A. That was in 1868.
Q. Have you had anything to do with it since?
A. No, sir.
Q. Give us some other pieces.
A. When I say I have had nothing to do with — since, I purchased land in the subdivision and resold it; then I bought 52 acres adjoining it, bordering the park now running from 51st to 55th streets and Cottage Grove avenue on the west and what is known as Wharton avenue on the east.

639 Q. Was that subdivided at the time you bought it?

A. No, sir.

Q. What did it finally become—what subdivision?
A. Drexel and Smith's subdivision.
Q. How much was that?
A. Fifty-two acres.
Q. Did you sell that all out?
A. I sold it in a body.
Q. Have you had anything to do with any portion of that since then?
A. Yes, sir.
Q. In what respect?
A. Resold land there.

Q. Give us some other piece.

A. There were eighty acres in Drexel & Smith's subdivision, lying between Fifty-first and 47th street- and Cottage Grove avenue on the west and Egandale avenue on the east; it was subdivided into eight blocks. Then sixty acres bordering Washington Park on the west, lying north of 55th St. and running from what was then known as Kankakee avenue west to Indiana.

Q. What subdivision is that now?

A. Jennings & somebody's.

Q. Jennings & Moffat?

A. That is it. Then among others there was thirty acres bounded by 47th and 44th street- and Egandale and Greenwood avenue;
640 that does not border on the park; it is a block east of Drexel boulevard.

Q. What other pieces?

A. Seventy-two acres known as Hugh Meher's subdivision.

Q. That is just south of the present West Park?

A. Where the Washington Park property is.

Q. South of the West Park?

A. Yes, sir.

Q. Did you have that for sale?

A. Yes, sir; I bought it.

Q. Have you got it now?

A. No, sir.

Q. Sold it?

A. It now belongs to the Washington Park Club; resold recently. There was five acres in Maher's subdivision; that is 100 feet west of Cottage Grove avenue, with a north frontage on the park, and twenty-two and a half acres west of Cottage Grove avenue, fronting south on 55th street, now in the park.

Q. When did you buy that?

A. 1868.

Q. When did you sell it?

A. 1868.

Q. To whom?

A. To the park; 1868, I think it was; 1868 or 9; I have a
641 memorandum of it here.

Q. Any other pieces of property that you now remember that you had?

A. I resold from some of those pieces.

Q. Were you acquainted with what is known as the Phillips tract?

A. Yes, sir.

Q. How long have you known that tract of land?

A. Since the summer of 1864.

Q. Have you ever been on it?

A. Yes, sir.

Q. Were you on it prior to 1870?

A. I was on it in 1864.

Q. And from that time on?

A. Yes, sir; at various times.

Q. Were you acquainted with the value of the land in August, 1870?

A. I think so.

Q. What, in your opinion, was the fair cash value of the west eighty acres of that tract, now in controversy, on the 27th of August, 1870?

A. For the high land, $1,000 an acre; for the low land, $250 an acre.

Q. Were you acquainted with the shore piece there of 34 acres?

A. Yes, sir.

Q. What, in your opinion, was the 34-acre shore piece worth on the 27th of August, 1870?

642 A. My recollection is there was in the southwest quarter.

Q. The southeast corner?

A. Yes; the southeast corner; a piece of ground with some trees on it; a kind of recollection. That is my recollection. I don't know whether it is there now, to which I attached some value as a fancy piece of ground, and I thought that piece of ground was worth $1,200 an acre.

The COURT: How many acres were in that?

A. Six or seven acres. I don't know exactly what the amount was.

Mr. GREEN: The evidence shows there was about six acres in that.

Q. The balance of 34?

A. The remainder of that land was as low. I valued it between three and four hundred dollars an acre.

Q. Was there any change in the value, say, from 1867 to 1870?

A. A very great change.

Q. What was the cause or causes of the change in the value of the land between the times I have spoken of?

643 A. There were natural causes operating on all lands in the vicinity of Chicago, and then there was the principal cause, the anticipation and agitation of the park project.

Q. Before the location or after?

A. In 1867 there was an attempt to take what is known as Eagandale, which I have referred to, as a park; then the question of parks became agitated and speculations began—a little feeling of speculation—which did not arise until after 1867, but people generally felt there were to be parks located there, and it raised their expectations of values.

Q. In fixing your value to this land, have you taken those causes you have mentioned into consideration?

A. I have.

Q. Take that west eighty in August, 1870, without any park or prospect of park; what, in your opinion, would it have been worth?

Objected to. Overruled. Exception by plaintiff.

A. In 1867?

Q. In August, 1870.

A. There might have been some natural causes that would have

caused an acceleration of value, but without the parks it would not have been a great deal more than it was in 1867.

Q. Say, in 1870, without any park or prospect of a park;
644 about what do you think the land would have been worth?

A. Not over $200 an acre for the high land, and the same proportion less for the low land I have given.

Q. Was that land of that character saleable in 1870?

A. Speculation in 1870 had receded somewhat; there was more speculation in 1869.

Q. You mean aside from the parks?

A. Aside from the parks?

Q. No, sir.

A. Simply it was an uninviting, repellant piece of land to purchase without those accessories of speculation.

Q. Was that land in its then condition suitable for speculation?

A. No, sir.

Q. Why not?

A. Owing to its topographical character low land; the land would not have been suitable for subdivision without being brought up to the level, say, of Stony Island avenue; so it could not have been sold and put in condition for habitation, I think.

Q. What could it have been used for?

A. Take an investor in land and show him land and there would be two elements that would enter his values—one a spec-
645 ulation element and the other, "What can I do with it, what profit would there be in it to me, could I subdivide and sell it, could I use it for manufacturing purposes, or any purpose of profit." I do not think it would have been saleable; there is no neighborhood; the Illinois Central, to be sure, had a railroad there, but the service in 1867 was very poor.

Q. In 1870?

A. It was better in 1870, but very poor; my recollection is there was no macadamized road on Stony Island avenue, no road there which I think run through this property; I know it was to the left of the main road now, and altogether it was not a piece of property that would invite a purchaser.

Q. Have you had any experience in subdividing property?

A. Yes, sir; somewhat.

Q. Buying a tract of land and subdividing it, what rate would it have to be sold out at for the purchaser to get anywhere near the whole?

A. There are a great many elements entering into that; you require a great margin of profit; you subdivide a piece of land and you have a great many things to do to that piece of land to make it available for habitation; there are streets to be thrown up;
646 maybe sewers to be built; there are assessments of various kinds and taxes to be taken into consideration, and interest running against it, and the sales of subdivided land outside of the city of Chicago, except in some instances, are not frequent—that is, you can sell a lot one day and maybe wait six months or a year to sell another. There is an uncertainty connected with it which re-

quires a very great tangible margin of profit for a man to undertake it, in my opinion.

Q. From your experience what would you say was the percentage?

A. It is difficult to arrive at it, but unless the land was very favorably located in all respects, with sewers, water, gas, and railroad conveniences, I should think that 200 per cent. ought to be the difference.

Q. Supposing that in 1870 this land lying along Stony Island avenue had been subdivided into lots—simply the high ground—in your opinion would that have been ready of sale or slow?

A. I should think very slow.

Mr. THOMPSON: This park you speak of, when the agitation took place in 1867, where was it they proposed to locate that park?

A. Eagandale was the part of the land that was proposed
647 to be taken—the S. W. ¼ section 11.

Q. The location of the park which you are speaking of, the agitation about which took place in 1867, was a park lying on the property now occupied by Eagandale, was it not?

A. Yes, sir.

Q. The south line of which was 55th street?

A. Yes, sir.

Q. When did you first hear of any proposed location of a park between 56th and 67th streets and east of Stony Island avenue?

A. 1868.

Q. What time in 1868?

A. I don't remember.

Q. Was any of this land which you have been speaking of sold in 1870—these pieces that you have said you were familiar with?

A. No, sir; none of them. Well, some resold in 1870, in one or two instances.

Q. Did you have anything to do with the resale?

A. Yes, sir.

Q. How near to this piece of land in question is the nearest piece of those you named, in miles?

A. The nearest piece of land will be lot 14, in Mayer's subdivision.

Q. That would be over a mile west, would it not?

A. Yes, sir.

Q. These other pieces that you have named, some of them up here at 47th street, would be how far away?

648 A. From 47th to 55th is a mile; from 55th to 63rd is 2 mile-.

Q. And how far would they be west?

A. Well—

Q. (Interrupting.) Would be about a mile west?

A. Well, not quite so far west. I think from Woodlawn avenue to Eagandale would be half a mile, would it not?

Q. Three-quarters of a mile?

A. Yes.

Q. Do you know of any sales within half a mile of this in 1870?

A. Outside of the park?

[Q.] I do not ask you to give them, Mr. Roget.

A. I do not remember any sales.

Q. I would like you to explain to the court and jury how you were able to say what a piece of land down in that locality would be worth a certain sum of money in 1870 if it did not have the surroundings that were around it?

A. I give my opinion as a real estate broker?

Q. Well, on what do you base such an opinion?

A. On the general acceleration of values.

Q. No; I am asking you. You have stated that in your judgment this land would have been worth about one-fifth the value you placed upon it provided there had been no park there?

A. Yes, sir.

Q. And had been no park agitation ever indulged in. Now, I want to know of you how you arrive at any such result as
649 you have stated?

A. Taking the park element out?

Q. Yes, sir. How do you get at it?

A. Well, its remoteness, its peculiar formation, its want of neighborhood. I do not think the advance could have been any more than that.

Q. That would make the high land worth $200 an acre, in your opinion?

A. Without the park element.

Q. Do you remember the number of local trains that stopped at 63rd and 57th street- ev-ry day in 1870?

A. No; I know they were very much less than they were after, subsequent to the fire in 1872. The stations were very bad in those times.

Q. There were stations there, was there not?

A. Yes, sir; there was stations there. They were very uncomfortable stations—for instance, the stations at Hyde Park.

Q. Were they stations with fires kept in them?

A. Not all the time; no, sir.

Q. I don't mean in summer, of course.

A. Sometimes the fire was allowed to go out. There was not that attention given to suburban business.

Q. Were there not station keepers?

A. I do not remember whether there was or not. But the stations were poor stations.

Q. Do you say that Stony Island avenue was not macadamized in 1870?

650 A. That is my recollection.

Q. Do you recollect that fact?

A. It is my belief.

Q. You do not state it as an absolute fact?

A. I do not state it as an absolute fact.

Q. But that is your impression?

A. Yes, sir.

Q. Where was the Hyde Park Hotel at that time?

Q. The Hyde Park Hotel was up what we call the lake shore; what was known as Oak street; now called 53rd.

Q. How far is that north of the north line? Do you know what the north line of the park is there?

A. 56, I think.

Q. And the hotel was between 53rd and 54th, was it not?

A. Yes, sir.

Q. Do you remember whether in 1870 that portion of property lying immediately west of Stony Island avenue and north of 57th street was built up and occupied?

A. North of 57th?

Q. Do you remember where Mr. Norton used to live?

A. He lived back of Hyde Park avenue, did he not?

Q. Yes, a little back of Hyde Park avenue; but wasn't that portion lying west of Stony Island avenue in 1870 from 57th street north built up?

A. There was a good many houses. I don't think solidly.

651 Q. Hyde Park avenue is next west?

A. Yes, sir.

Q. How was the next one built up?

A. Scattering.

Q. And the one next to that?

A. Washington avenue are you speaking of?

Q. Yes, sir.

A. It was not very much built up.

Q. Do you remember where Mr. Nelson lived?

A. I remember where Mr. Nelson lived, but I do not remember the name of the street?

Q. Well, wasn't there quite a large settlement in just north of 57th street, in front of the railroad, west?

A. There was a settlement in there; yes.

Q. What suburban railroad do you consider was the most attractive suburban railroad in 1870 going out of the city of Chicago?

A. Probably the Northwestern.

Q. You think the Northwestern was more attractive than the Illinois Central?

A. It was not more attractive to me personally, but I think there was more people attracted by it than there was down South.

Q. Wasn't Hyde Park pretty well settled up?

A. In 1870?

[Q.] ——.

A. Well, yes; pretty well settled.

Q. Where do you consider the center of the village of Hyde Park, and where was it in 1870—absolute center of the village?

A. The whole village?

652 Q. No; I am speaking of what we know of Hyde Park property?

A. Oh, the little suburb; you don't mean the whole part of it?

[Q.] No; I do not.

Q. Now, if you will define what you call Hyde Park—its limits—I will answer the question.

Q. Well, where was the center of location as to the residences from 63rd street north to 47th street and west of the park—the west part of that district?

A. Probably 53rd street was the center.

Q. 53rd and Hyde Park avenue?

A. Well, Hyde Park avenue and a street or two west.

Q. Where was the town hall?

A. The town hall, then, I think, was about 51st somewhere, or 52nd; I don't know whether it was where it is now or not. It was in there somewhere on Hyde Park avenue.

Q. Right by 53rd street, is it not?

A. It is now; yes.

Q. And was then?

A. Well, I don't recollect whether it was then or not; it seems to me it was moved since this, but I don't recollect how it was then.

Q. That is the spot, isn't it, right where I am holding my pointer; corner of Hyde Park avenue and 53rd street?

A. Yes, sir.

Q. Is the post office there?

A. I think so.

653 Q. How far is it from the post office to the north line of this property?

A. About three-quarters of a mile, I should say.

[Q.] Not quite three-quarters—two blocks to the quarter, isn't it—eight blocks to the mile?

A. About three-quarters of a mile.

Q. Well, it is eight blocks to a mile?

A. Yes, sir.

Q. From 53rd to 59th would not be that?

A. 53rd to 59th would be six blocks, wouldn't it, and that would be three-quarters of a mile, would it not?

Q. Do you know of any sales, Mr. Rozet, in the park in 1870, other than to the South Park Commissioners?

A. On a former trial of this case, about a year ago, I believe I testified as to knowing of a sale that was made by a "Mr. Dunlevy to Howard Priestly," and I was under the impression then that the sale was in 1870. I have been since informed that it was not till 1872 by Judge Dunlevy, I think, and I made an error about testifying to its having been in 1870.

Q. Was that a sale of which you had personal knowledge; don't give the figures or anything about it; I only want to know whether that was a sale, whenever it was made, of which you had personal knowledge?

654 A. I saw Mr. Priestly during—well, I don't know that I had knowledge of the sale, but I had knowledge of the intention to purchase by Mr. Priestly. He was an intimate friend of mine.

PAUL CORNELL was then called as a witness on behalf of the de-

fen lant, [and], being first duly sworn, was examined in chief by Mr. FULLER, and testified as follows:

Q. Give us your full name, Mr. Cornell.
A. Paul Cornell.
Q. How long have you resided in Cook county?
A. About 37 years.
Q. How long have you resided in the town of Hyde Park?
A. About thirty-two and a half or thirty-three years.
Q. What has been your business, Mr. Cornell, during your residence in the county?
A. I have been a lawyer by profession.
Q. Were you one of the South Park Commissionors; and, if so, from what period of time?
A. I was.
Q. What period of time?
A. A little over 14 years.
Q. From when to when?
A. From the spring of 1869 to 1882; I think it was between 1882 and 1883; I forget just what date.
Q. From the spring of 1869 to 1882–'3?
655 Mr. THOMPSON: From the commencement; he was one of the first commissioners appointed.
A. Yes, sir.
Q. Did you while you were South Park Commissioner fill any official position—if so, what—on the board?
A. Yes.
Q. Well, state what and when.
A. The first two years I was secretary.
Q. That is, 1869 and 1870 into '71; is that it?
A. Yes, sir.
Q. Did the board have any committee in relation to the purchase of land?
A. They did have; yes, sir.
Q. What was the name of the committee?
A. Called the land committee.
Q. Were you on it?
A. I was.
Q. Are you acquainted with the tract of land in question—the Phillips tract—and that of the land throughout what is known as the East Park?
A. I am.
Q. How many years have you known those lands that are included in the lines of East Park?
A. Since 1853.
Q. Do you recollect, were you cognizant of, a sale by one W. H. Hoyt of some pieces of land within the area of East Park?
A. I was.
Q. What time was that? I will first ask you where that was?
A. It was on the lake shore; in March, 1871.
Q. What did the purchase include?

A. It included three small pieces.

Q. Three small pieces of land?

656 A. Yes, sir; that is the piece of property. (Indicating.)

Q. At each of these corners of the triangle?

A. At each corner.

Q. How much in each corner?

A. In the west corner, that which lies away from the lake, two acres and thirty-eight one-hundreths; in the other two one was one-tenth of an acre, and the other was eighty-two one-hundreths of an acre.

Q. This 2.38, might it not have been 2.383?

A. Well, possibly.

Q. What was this piece of ground—this whole piece?

A. Hoyt's subdivision.

Q. It was subdivided?

A. Yes, sir.

Q. These were the corners left outside, I suppose, of the lots of the subdivision?

A. Not outside of the subdivision; the outside lots of the subdivision.

Q. Did the street run from the subdivision on the front?

A. I think the street run through the center of it.

Q. What was paid, and when, Mr. Cornell, for the three parcels of it?

A. According to the books of the commission, I see there was two payments.

Q. The COURT: Do you know anything except what you find there?

A. Well, I made the negotiation myself This is a memo-

657 randum I have from data, which I took and made myself, practically. In March I find a payment, and also in October. In March, 1871, I think, we paid 5,900 and some odd dollars; in October we paid——

Q. (Interrupting.) No, no, Mr. Cornell; what was the total?

A. 6,945.00.

Q. 5,945, wasn't it?

A. 5,945?

Q. Yes; how much in March, 1871?

A. I haven't got that exactly. I thought I had, but I haven't.

Q. It was in two payments, wasn't it?

A. In two payments; yes, sir.

Q. Do you recollect how much in October?

A. I do not. That is a point that I do not think I have got.

Q. There were two payments, and aggregated $5,945; is that it?

A. Yes, sir.

Q. When was the purchase-price agreed upon, or when was the negotiation completed?

A. It was in the spring of 1871.

Q. Mr. Hoyt, the elderly gentleman who was on the stand—was that W. H. Hoyt?

A. The old gentleman? Yes, sir.

Q. He said something about the park offering him three thousand dollars an acre; was there any such offer as that?

A. I don't remember of any such offer.

Q. This was three and thirty one-hundredths acres, was it not?

A. Yes, sir; three and about that.

658 Q. And the price was as stated?

A. Yes, sir.

The COURT: These three pieces don't lie together?

A. No, sir.

Mr. FULLER: They were all included in the same transaction?

A. Yes, sir.

Q. It was three irregular pieces, was it not?

A. Yes, sir.

Q. And it picked up these fragments?

A. Yes, sir.

Q. All included in one conveyance and one bargain?

A. I think it was.

Q. By taking the entire subdivision you took, of course, the street, and the right to vacate the subdivision?

A. Yes; by taking the entire subdivision; and we had a right to vacate the Hoyt subdivision.

Q. Looking upon that map, Mr. Cornell, marked Defendant's Map B, do you recollect the purchase of John V. Le Moyne of the tract of land lying next to 56th street, in the extreme northern portion of the East Park?

A. I do.

Q. When was that purchase made?

A. Made in November 3, 1870; made in November, 1870.

Q. This tract is it (indicating), Mr. Cornell?

A. Yes, sir.

Q. From Stony Island avenue to the lake?

A. Yes, sir.

659 Q. How much was included in the Le Moyne contract?

A. 50 acres.

Q. And it ran from—well, it was bounded by 55th, Stony Island avenue, and the lake?

A. 56th; yes, sir.

Q. And Stony Island avenue and the lake?

A. Yes, sir.

Q. What kind of land was that, Mr. Cornell?

A. It was a ridge on Stony Island avenue, I think; quite a sand ridge, with trees and brush on it, and then a small slough running through the centre portion of it; then the lake shore was medium low land.

Q. How did it compare with the land in this Phillips tract—this west eighty? How did the part next to Stony Island avenue compare with the part of the west eighty on Stony Island avenue?

A. It was a similar kind of land.

Q. Only nearer the city?

A. Only nearer the city.

Q. Was it as high?

A. Some portions of it higher.

Q. How did it average as to the height of the ground?

A. Oh, it averaged better, I should think, as to height; a little higher.

Q. About the same quality of land?

A. About the same quality of land.

Q. And the lake shore, you got the whole land here (indicating), up to the lake shore?

A. Yes, sir.

Q. How did that compare with it here?

A. It was higher.

660 Q. Higher?

A. Yes, sir; higher land.

Q. What did the South Park Commissioners pay John V. Le Moyne for that land?

Mr. THOMPSON: We desire your honor to know whether their object is to prove sales to the park?

Q. Who is John V. Le Moyne?

A. He is an attorney here in the city.

Q. He has been here for many years?

A. Yes, sir.

Q. Large owner of property?

A. He has been.

Q. Wasn't this a purchase outright from Le Moyne?

A. We made the purchase outright.

Q. Was it a condemnation proceeding?

A. I think there was a condemnation proceeding that was carried through afterwards for the purpose of perfecting the title.

Q. Simply for that?

A. Yes, sir.

Q. By agreement?

A. Yes, sir; that is my recollection now, when we thought the title was in any way objectionable we sometimes went through the form.

The COURT: It seems to me a little singular in case like this when the lines are being established; taking the question, what particular land is worth, will you say it is worth so much, and certain other land within the same line so much? Now, some people

661 might be willing to part with their property for less than they thought it was worth rather than to go to the expense of condemnation. I think, not having allowed these sales outside, we had better exclude this, although I will hear your authorities. If you are permitted to show the price of Hyde Park property, of course they are permitted to show any other property. Then it is for the jury to say whether the property is similarly situated.

Mr. THOMPSON: I am willing for this.

Mr. FULLER: Did they object?

The COURT: No. Col. Thompson says he is willing for it, but whether they do or not object I think, under the circumstances, you may go on. They go on and prove the value of certain property

within the lines down below this. Now, if they do you may be allowed to go within the lines and prove it; if one does it is fair for the other. They entered on that line of testimony, and you may go on; but I understand Col. Thompson waives the objection.

Question withdrawn for the present about the Le Moyne piece on account of condemnation.

662 The COURT: Were there any of the owners of this piece minors?

A. I think there were; Mr. Le Moyne represented some parties in Pittsburg who owned the land, and I think it was mixed up in some family matters, whereby we thought best to condemn the land.

Mr. FULLER: We won't take any chances on that.

Q. Now, Mr. Cornell, immediately south of the Le Moyne piece did you purchase the tract to which I am now pointing, and, if so, from whom and when?

A. We did; yes, sir.

Q. Whom from?

A. Bliss and Stevens.

Q. When, Mr. Cornell?

A. In 1870.

Q. What time—give the time?

A. February, 1870.

Q. How many acres?

A. Ten acres?

Q. At what price?

A. $12,000.

The COURT: From whom was this?

Mr. FULLER: Bliss and Stevens. The tract runs from Stony Island avenue?

The WITNESS: Yes, sir.

Q. And is immediately south of the Le Moyne piece?

A. Yes, sir.

Q. And does not run to the lake?

A. It runs about two thirds of the way to the lake

663 Q. Immediately south of the Bliss and Stevens piece? Did you make the purchase?

A. We did.

Q. Whom of?

A. William P. Gray.

Q. When?

A. June 21, 1870.

Q. How many acres?

A. Ten acres.

Q. Were there any improvements on that land at that time?

A. There was a house on it.

Q. What was the value of the improvements?

A. Well, the value of the house and fence, and so forth, were about from 2,500 to 3,000 dollars—somewhere along there.

Q. What was given for the Gray piece?

A. $20,000.
Q. June, 1870?
A. Yes, sir.
Q. Including the improvements?
A. Including the improvements.
Q. That runs to Stony Island avenue?
A. Yes, sir; and about two-thirds of the way to the lake.
Q. What was the character, Mr. Cornell, of the Bliss and Stevens piece—the topography of it?
A. It was a ridge on Stony Island avenue, and then run back into a slough.
Q. Of about the same general character of this 80?
A. Yes, sir.
The COURT: That is north?
Mr. FULLER: Yes, sir, and nearer the city.
Q. All this is north of 59th street that we are speaking of?
A. Yes, sir.
664 Q. Wasn't that as high—the Bliss and Stevens piece—as this front part of the west 80 of the Phillips tract?
A. About the same.
Q. How was it as to the Gray piece, as to the character of the ground?
A. Almost precisely like it.
Q. Like the Bliss and Stevens?
A. Like the Bliss and Stevens.
Q. And the Stony Island avenue front *and the Stony Island avenue front* of this west 80 acre tract?
A. Yes, sir;
Q. Was it as high?
A. Yes, sir.
Q. As the Stony Island avenue part ran back into the same slough?
A. Yes, sir.
Q. Now, then, on Stony Island avenue south of the Gray piece, did you make a purchase?
A. We did.
Q. Just coming down to 59th street?
A. Purchased 10 acres of J. D. Platt.
Q. Well, when?
A. It was April, 1870.
Q. Were there improvements on the land?
A. It had a house; yes.
Q. What was the value of these improvements?
A. Oh, about $2,500; possibly $3,000, the fence and all.
Q. By the way, did Gray occupy that as a homestead?
A. I think he did.
Q. Now, this Platt piece; how was that as to height and general characterictics?
A. It was very similar to the Gray piece.
Q. What did you pay to Platt?
A. $20,000.

665 Q. 10 acres, and that included the improvements, did it not?

A. Included the improvements, $20,000.

Q. This and that piece (indicating) is just north of the Phillips tract, is it not?

A. Yes, sir; it joins it on the north.

Q. The next piece east of the Platt piece was purchased of Starkweather, was it not?

A. Starkweather; yes, sir.

Q. In January, 1870?

A. In January, 1870.

Q. But there was a condemnation there the same as the Le Moyne case?

A. Yes, sir; to perfect the title.

Q. The next east of the Starkweather, did you make the purchase there on the lake shore?

A. We did.

Q. How much?

A. Fifteen acres and a fraction, seven one-hundredths.

Q. When was that purchase?

A. In December, 1869.

Q. It was the very last day of December, was it not?

A. December 31st, 1869.

Q. Who did you buy it of?

A. Morton & Clement.

Q. What did you pay?

Objected to as to the length of time prior to August, 1870. Objection overruled. Exception.

A. We paid $21,469.

666 Q. Who were they, Morton and Clement; what is their business?

A. They were at the time, I think, merchants in the city here.

Q. Old residents here?

A. Old residents here; yes, sir.

Q. Mr. STORRS: What concern is Mr. Clement, of the firm of Clement & Mayne, — now?

A. ——.

Q. Mr. FULLER: Is Clement still in business?

A. I think he is.

Q. That tract runs from the Starkweather piece to the lake?

A. From the Starkweather piece to the lake; yes, sir.

Q. Now, was here upon the west side of the west 80 a subdivision, Phillips' subdivision, of 26 acres?

A. Yes, sir.

Q. Was there any purchase made of lots nine and ten of Phillips' subdivision; and, if so, when and of whom?

A. In January 1st, 1870, we bought two lots of Mr. Bayington, $1,250 apiece; two lots for 2,500 dollars.

Q. They were acre lots?

A. They were called acre lots.

Q. Lot 15, in that subdivision, did you buy that?
A. July 22, 1870, we bought lot 15.
Q. Whom of?
A. Mr. Pike.
Q. For how much?
A. $1,250.
The COURT: Where was that?
Mr. FULLER: In the 26 acres, lots 9, 10, and 15, which are excepted in this decree.

667 Q. Do you remember where these lots are?
A. Yes, sir; I remember where they are.

Q. Are they the same height as the balance thereabouts? You remember there was some high and some low in each of these lots.
A. Oh, yes. They fronted on Stony Island avenue.
Q. About the same as the other?
A. About the same.
Q. They had about as much land as any others; it was principally high, wasn't it?
A. Well, yes; principally high. It ran back a little into the low ground.
Q. Just as it is depicted, I suppose, on this?
A. The Pike lot wasn't quite so high, if I remember right, as the Bayington lot; a little variation.
Q. Just look onto the map and see.
A. Yes, just as I thought. The Pike lot was a little lower than the 9 and 10 lot.
Q. But it was high at the front?
A. Reasonably high at the front.
Q. Now, passing south of the track, did you purchase a tract on the corner of 67th and Stony Island avenue?
A. We did; yes, sir.
Q. Who- of?
A. Kimbark.
Q. How many acres?
A. 15 acres.
Q. On what date?
A. November 23, 1870.
Q. Right in this corner of the park?
A. Yes, sir.

Mr. DUNLEVY: If that was in litigation at the time, we are
668 going to object to such as was in litigation.

Q. Mr. Cornell, didn't the park commissioners pay in every instance for a good title?
A. That was our determination.
The COURT: He asked you if you did.
A. Yes, sir; certainly.
Q. That is what you contracted for?
A. Yes, sir. We bought the land, paying at the time what we thought was a full price at the time, and took opinion of our attorneys of our title.

Mr. DUNLEVY:

Q. Was there a suit at the time, and was there a compromise and suit dismissed?

A. I don't think there was any suit existing at the time we paid for the land.

Mr. FULLER: It was all on the opinion of the counsel at the time.

Mr. DUNLEVY: We will show there was litigation as to the owner.

Q. Well, that was 15 acres, was it not?

A. 15 acres.

Q. The 23rd of November, 1870?

A. $20,000.

Q. I give the date correctly, do I?

A. Yes, sir.

Q. Now, next east of Kimbark—this tract here (indicating), running to 67th?

A. We bought the piece next east of the Kimbark tract—ten acres—November 18, 1870, for $15,000.

Q. Of whom?

A. Levi Blackwell.

Q. Now, what kind of land was this Kimbark 15 acres, on Stony Island avenue?

669 A. It was principally ridge land.

Q. Any timber on it?

A. No growth of trees.

Q. How did it compare with the west 80 of the Phillips tract?

A. Full better, I should say.

Q. How did it compare with the 26 acres [of] the subdivision?

A. Well, I should think fully as good.

Q. How was this Blackwell 10 acres?

A. That was also ridge land.

Q. That was also ridge?

A. Yes, sir; nearly all of it.

Q. How did that compare with the 54 acres of the west 80 of the Phillips?

A. Fully as good; rather, of the two, better I should say.

Q. Was there as much low land in proportion in the Blackwell piece?

A. I think not.

Q. Now, did you purchase a tract south of the Phillips tract; and, going up to 63rd St., where? Point out.

A. Yes, sir; that is the piece you are pointing out.

Q. It is a narrow piece immediately south of the east 80 of the Phillips tract?

A. That is the east 80 of this 160.

Q. When did you buy that?

A. In January, 1870.

Mr. THOMPSON: What time in 1870?

Q. How many acres?

A. I haven't the date; it was 15 acres.
670 Q. Of whom did you buy?
A. George Hambright.
Q. What price did you pay?
A. $10,000.
Q. How many acres?
A. 15 acres.
Q. The next piece east, I believe, was condemned, was it not—that is, the Colehour tract.
A. Yes, sir.
Q. Now, south of the Hoyt subdivision, and coming into the lake shore, running down to 67th street, in the southeast corner of East Park, did you buy a tract?
A. We did; yes, sir.
Q. Here? (Indicating.)
A. Yes, sir.
Q. Of whom?
A. Of H. O. Stone.
Q. When?
A. July 6th, 1870.
Q. How many acres?
A. 30 acres.
Mr. STORRS: Q. Did you get the riparian rights there? How much did you pay?
A. $24,000; $800 an acre.
Q. That gives this shore line, does it not?
A. Yes, sir.
Q. (Continues:) Mr. Cornell, as depicted on the map?
A. Yes, sir.
Q. You got all the riparian rights, then, did you?
A. Certainly.
Q. That was immediately south and next to the Hoyt subdivision, was it not?
A. Yes, sir.
Q. Who was H. O. Stone?
671 A. A speculator here. A large real estate owner.
Q. He had lived here a great many years.
A. Yes, sir; a long time.
Q. What kind of a tract of land was that?
A. Well, it was alternate slough and ridge.
Q. Like the average of the Phillips tract?
A. About like that, I should say.
The COURT: About like the 34 acres?
A. About the same as the 34 acres; perhaps just about, taking it altogether.
Q. Was there any high land upon it?
A. Next to the lake it was a pretty good height; but back it run into the low land.
Q. Like the 34-acre ridge?
A. Yes, sir.

Q. I will ask you about the character of the land of the Hambright fifteen acres.

A. That is slough land.

Mr. THOMPSON: All slough?

A. I believe there is a little bit, a little nubbin of ridge, but I think not much of it; just a little, if I remember right.

Cross-examination by Mr. THOMPSON:

Q. Did not the park commissioners pay Mr. Gray $25,000?

A. No, sir; $20,000.

Q. What did they give him $5,000 for?

A. I don't know as they ever did.

Q. Did you take that from the books lately?

A. I took it from the memoranda I have carefully examined; also the deeds and from the plat.

672 Q. I do not care about the deeds. Did you take your memorandum of what was paid from the South Park books?

A. Well, no. I made up my memorandum from the vouchers which we paid for the land and from the deed.

Q. You did not make any reference to the books?

A. I did not look at the books. I took it from the vouchers that we d ew in paying for the land and that corresponded with the consideration of the deed.

Q. You participated in the sales?

A. Yes, sir; I made most of the sales, but the sales were always brought before the board and then passed upon by the board, and then the secretary drew a voucher to pay for the land, so that every sale was really endorsed by the commissioners. We usually followed the recommendation of the land committee.

Q. You did not always pay them all in one voucher, did you?

A. Not always.

Q. Do you mean to say in ev-ry instance the consideration named in these deeds covers all the land cost the commission?

A. The considerations of the deed were the prices we gave for the land; there is no question about that. I would not say but

673 what possibly it may have cost the commission something at some future time upon some tracts of land where suits were brought against the commission.

Mr. FULLER: Afterwards?

A. Afterwards.

Q. Now, I will ask you whether all that land included within the parks which you name as the Bliss & Stephens tract, the W. P. Gray tract, the Platt tract, and the Morton & Clement tract? Whether there was not at the time you purchased a suit pending against the title which you purchased?

Mr. FULLER: To your knowledge.

Q. Yes, to your knowledge.

A. I don't think there was any suit pending at the time we made the purchase.

Q. Do you mean that it had been to the Supreme Court—decided?

A. At the time that we made those purchases that you have reference to, I think, it was not in force.

Q. Did you not know that title was questioned which you purchased?

A. Not when we paid for it?

Q. Do you mean to tell the court that you had no idea that the title was not questioned at the time you made purchases of Gray, Platt, Bliss, and Stephens and Morton and Clement?

A. Well, take the Gray, Platt, Bliss, & Stephens and Morton & Clement, I am very confident. I am sure I did not know about any case at that time.

674 Q. Didn't you take a bond from these parties about that very thing?

A. Let me explain. I am perfectly clear about it now.

Mr. STORRS: Where did you get it from as the South Park attorney?

Mr. THOMPSON: I had nothing to do with it. I never was South Park attorney until 1875, and had nothing to do with the land.

A. We bought the Bliss, Gray, Platt, and Morton pieces. Mr. Stephens did not get paid for his entire piece; he got part down and part on time. Before we paid the last payment to Stephens some one filed a bill for dower. I think we considered it a blackmailing thing. We, then, in the case of Stephens, my remembrance is, took a bond and held back a small part of the money to indemnify the commissioners against that suit that was then brought of dower.

Q. Didn't you also take a bond from Gray?

A. I don't remember it if we did.

Q. Didn't you take a bond from Platt?

A. If we did I have forgotten it.

Mr. STORRS: Suppose they did, that shows the whole consideration was expressed in the deed.

Q. The bonds, so far as you remember, were mere personal bonds, were they not?

A. In the Stephens case there was a little left.

675 Q. It was a mere personal bond, was it?

A. Some one signed it with Stephens, I think. I think it was considered some part of the consideration was held back.

The COURT: Is it disputed these were warranty deeds which these parties made to the park commissioners?

Mr. THOMPSON: I don't know what they were.

Mr. FULLER: They were all warranty deeds.

A. That is my remembrance.

Q. I will ask you in reference to this Gray house. Was not Mr. Gray permitted to move that house off, and was not that part of the bargain?

A. I have forgotten if it was.

Q. Did he not move it off?

A. We sold those two houses; that is my remembrance now. I think we sold those two houses. It is possible Gray got one.

Q. Was it not agreed the price he should pay for it at the time?
A. It is so long ago, I don't know.
Q. You don't remember?
A. It seems to me I should remember it if there had been anything of the kind.
Q. Do you remember who moved the Gray house?
A. It runs in my mind now that Gray bought that afterwards.
Q. He moved it away, didn't he?
A. I think he did.
Q. Do you swear that Gray ever paid the commission anything for that house?
676 A. I will say this: I am very confident we sold those two houses; that is my opinion.
Q. It was Captain William D. Gray?
A. Yes, sir.
Q. Did your arrangement with Capt. William P. Gray give any privilege of moving that house?
A. I think not, for this reason: Our park engineer lived in that house quite a long time after he bought it.
Q. That was Sam's?
A. Yes, sir.
Q. Did he live in the Platt or Gray house?
A. In the Gray house.
Q. Finally Gray did move it away?
A. I think it possible he did; I am not sure.
Q. Have you given all the land in there purchased in 1870 or agreed for in 1870?
A. In where?
Q. In the park?
A. No, sir.
Q. What pieces have you left out?

Mr. FULLER: I object to that.
Mr. THOMPSON: I want to know what pieces were left out.
Mr. FULLER: I know you do, and that is the objection.
The COURT: You can ask if he has embraced all the park land in the park.
Mr. THOMPSON: Bought in 1870?
The COURT: Yes, sir.
Mr. THOMPSON: That is the question exactly—in this East Park, purchased in 1870, that you have not mentioned.
677 Objected to.

The COURT: You have introduced evidence of a number of sales within the park and the prices. If you have in this way shown what was paid for all the land within the park, that is one thing. It is only a part of it. It would, perhaps, have not quite so much weight as all of it.
Mr. STORRS: Why don't they put it in? It is part of their case.
The COURT: I think they may show, if they can, that does not embrace all the land in the park; it tends, perhaps, to affect the testimony already given by the witness.

A. I do not know what proportion was left out.

Mr. THOMPSON: I do not mean the condemned land; I mean the purchases. The question is what pieces there were purchased or agreed for in 1870 that you have not named.

A. There are five acres, I see, on 67th street.

Q. And Stony Island avenue?

A. No; five acres on 67th stree running north.

Mr. FULLER: Immediately below the Hambright piece?

A. Yes, sir; immediately south of the Hambright piece; there was five acres immediately north of the Blackwell piece.

Mr. FULLER: In 1870?

678 A. No; I am mistaken about that; that is later. There was 100 acres Dec. 14, 1870.

Mr. FULLER: Describe it.

A. It is a piece lying south of 63d street and east of the Blackwell piece.

Mr. THOMPSON: When was this piece purchased off at 63d street and on Stony Island avenue?

Mr. FULLER: I object to the question.

Mr. THOMPSON: I am merelyasking to see whether it was in 1870?

A. It was not in 1870.

Q. When was it?

Mr. FULLER: I object to it.

The COURT: You need not mention the price; state when it was.

A. January 23, 1871.

Q. When did you purchase of Legare?

A. January 29, 1876. That is the deed.

Adjourned to 10 a. m., Dec. 11th.

THURSDAY, *Dec.* 11—10 a. m.

The COURT: When we adjourned yesterday this question was presented: Shall the owner of the property be permitted on cross-examination within the park limits? I have thought of that, and conclude you are not entitled to do anything of the kind. In making out your case in chief you saw proper to prove a sale

679 within the park lines. The court permitted you to do that. For some reason satisfactory to yourself, you did not care to go any further and rested. Now, it is for the park commissioners to meet your case as best they can. They proved sales within the lines, and it is not competent for you, on cross-examination or otherwise, to say you will strengthen your original case by introducing further evidence of sales within the lines. I think you may do this much—which, I think, you have already done in cross-examining the witness—you may ask him if he has in his testimony embraced all the lands within the park limits.

Mr. THOMPSON: That was the extent of the question. Your honor misunderstood me. I did not ask for the price. I did not think I was entitled to it, and did not ask it. I thought, as your honor does, I was entitled to show, they having made an apparent going over this East Park, that I was entitled to show by the witness that they had left out purchases they made about that time.

The COURT: Strictly that you would not have a right to show when you were on your case. You had a right to show all the sales within the lines if you saw fit. You were entitled to bring in everything. You introduced evidence of one sale and stopped.
680 Then it is competent for them to introduce evidence of as many sales as they see fit within the lines. Having done that, the case on that subject ends. It is not for you to say then there were still other sales; you could have shown that.

PAUL CORNELL, having been recalled, was further examined, and testified as follows:

Mr. THOMPSON: Was this property which the park purchased south of 63d street, was the title of that at the time of the purchase a disputed title?

A. Our attorneys gave us an opinion.

Q. Never mind that; I am asking you if you know whether it was a disputed title.

A. I do not know; at the time we made the purchase, whether there was any suit on the property at all.

Q. At the time you were negotiating for it did you ascertain that fact?

A. I think, previous to the time that the commission bought it, I remember hearing something about some litigation in the property.

Q. It was what was known as the Kimbark title in dispute?

A. The commission required everything to be cleared before they paid the money.

Q. Can you not answer the question?

The COURT: I understand he says he does not recollect
681 there was and dispute at the time of the purchase.

Q. Is that your answer?

A. At the time we paid for it.

Q. At the time you negotiated for it, I am asking?

A. When the negotiations were commenced my remembrance is that Judge Beckwith found some little flaw in the title, and that the commissioners required the title to be perfected before they paid the money.

Q. Do you remember who were the park's attorneys at that time?

A. I do.

Q. Who were they?

A. Beckwith, Ayer, and Kales.

Q. Now, do you recollect who had this outstanding title or claim of title?

A. I remember who we bought the title of.

Q. Who had that outstanding claim of title that shattered that property?

A. I think Mr. Kimbark.

Q. He is a brother-in-law of yours, is he not?

A. No, sir.

Q. His brother married your wife's sister, didn't he?

A. Mr. Kimbark's brother married my wife's sister. He is my brother.

Q. Do you know who was Mr. Kimbark's attorney?

Mr. FULLER: I object; that is not cross-examination.

A. I do not.

The COURT: Suppose he does; even if it was one of the
682 counsel in this case, the counsel appears in a representative capacity, and even if you should be able to bring something against the counsel, that — not be visited on the case he represents.

Mr. THOMPSON: I am not challenging the integrity of the counsel in the least, and do not propose to; the object of my question is this: Here was an outstanding claim of title in Kimbark which we claim; the park practically controls; it was a cloud upon all these other owners, and the Park Commissioners were enabled from that fact largely to dictate terms to the owners of property they purchased.

The COURT: You may prove, if you can, that they acquired of Kimbark.

Mr. FULLER: I do not know what tract he is talking about; if he is talking about this the court has not permitted any evidence of that.

The COURT: Are you not limiting yourself to the sales which you proved?

Mr. THOMPSON: To the purchases which they have shown south of 63d St., with the exception of the Stone piece.

The COURT: I think they may prove, if they can, that any of the sales which were introduced here were of property on which you had acquired, or pretended to have acquired, some other title.

Mr. FULLER: I shall not object on that ground.

683 A. The commissioners never acquired any title to the property until they got the deeds that we paid for.

Q. Did the commissioners not practically control it without absolutely having acquired it; did you not through your attorneys practically control it?

A. I don't think the commissioners controlled it; not to my knowledge; I am sure I never heard of it.

Q. Did the commissioners' attorneys control it?

A. I don't know what they did.

Q. What was your understanding?

Objected to.

The COURT: I suppose they controlled it as attorneys of other parties; is that what you want to prove?

Mr. THOMPSON: As the attorneys of Mr. Kimbark.

Mr. FULLER: Suppose they did.

The COURT: If there is anything you want to explain, you can do it.

A. What is the question?

Mr. THOMPSON: The question is whether the park attorneys practically controlled this outlying title?

The COURT: Do you know whether they did or not?

A. The park, when the defect appeared, relied on the attorneys to

clear up the defect; what they did to do that—what course
684 they pursued—is a matter outside of the purview of any of the park commissioners, to my knowledge.

Mr. FULLER: Was not that after the price had been agreed upon?

A. I think it was.

Mr. THOMPSON: In making the purchases that were made by the park prior to the decision in the Cook case by the supreme court of this State what was the basis upon which you acted in reference to the date at which the valuation should be fixed?

Mr. FULLER: These particular purchases, bear that in mind.

Mr. THOMPSON: The purchases in 1870, which you have testified to. The Cook case was decided in the spring of 1872.

Question repeated.

Mr. FULLER: I object to it. You mean what their value was?

Mr. THOMPSON: I mean what was the value insisted upon with the purchasers, what was the claim on the part of the commission, and what was that claim made known to the parties of whom you bought? Was it insisted upon during your negotiations?

Mr. FULLER: They probably claim the property inside the lines was not entitled to the advance that property abutting on the lines received—the special benefit. If they did, their claim
685 was according to law, but in any event it was simply talk between buyer and seller.

The COURT: I think I will exclude that. If you wish you can ask him to what extent property was appreciated by reason — the agitation of the park and in anticipation of its establishment, and whether this property received any benefit, in his judgment, from that appreciation.

Mr. THOMPSON: My object is this: In these negotiations for the purchase of this property, for instance, the park commissioners, if I am correct, assumed the position that they would pay no price other than what the property was worth at the passage of the act, and refused to negotiate with person- who would not accept such figures, and where they would not it was a condemnation case. Where they would settle upon that basis they settled.

The COURT: You may ask him whether they paid the value of the property at the time they purchased.

Q. Were the values which you fixed upon these property-s which you purchased — they were fixed as to the date of the purchase, or were they fixed as of the date of the passage of the act?

Mr. FULLER: That is objected to. The question permitted was whether they paid the values.

686 The COURT: At the time of the purchase. He may answer that question.

Exception by defendant.

A. I do not think at the time we made these purchases there was any special time fixed as to value. The manner in which we con-

ducted the sales was very different from what an outside man would conduct the sales.

The COURT: The real question is, Did you pay what the parties claimed for their property; was that agreed upon as the value of the property at the time?

A. When the price of a piece of land was low enough we took it.

The COURT: Did you pay what the parties were willing to take as the value of the property at the time?

A. We paid what the parties were willing to take.

Q. As the value of the property at the time?

A. Certainly.

Mr. THOMPSON: Do you remember of having used the argument, or of having mentioned to these purchasers in your discussions with them, that they were only entitled to the value, and they must either take that or take a condemnation suit?

Objected to.

The COURT: It would not follow from that [that] they agreed to any argument of the kind, if it was used. You can ask him if both parties agreed to this purchase and sale upon the basis of its value at the time of the passage of the act, or whether
687 they paid what the parties were willing to take as the value of the property at the time of the purchase. He has already said they paid what the parties were willing to take at the time of the purchase.

Mr. THOMPSON: Can we not ask whether they were dealt with under that pressure?

The COURT: They have not introduced evidence here of condemnation sales, or sales in which there was a controversy. The presumption is the seller can take care of himself as well as the buyer. If you can show here that *that* the park commissioners, by any special facts, were able to get this property for less than what it was worth, you may do it, instead of doing that. You propose to show the commissioners said something at the time they were dealing with them. There is no evidence to show they were not able to take care of themselves.

Mr. THOMPSON: We will note an exception to the ruling.

The COURT: At the same time the court will allow the parties to prove any facts tending to show that the park commissioners were able to obtain the lands described in the sale at less than their value at the time. The court declines to allow the claimants or the
688 owners of this property to prove that the vendors in the sales within the park demanded, in the first instance, more than they finally agreed to take for their property; that the park commissioners refused to purchase at the price demanded, and that the parties finally agreed upon the sums mentioned in the several deeds.

Mr. DUNLEVY: We offer to prove that the park commissioners offered a certain price and threatened, if you do not take that we will litigate you until you are compelled to take it.

The COURT: You may prove that if you can.

Mr. THOMPSON: In any of these negotiations which you affected did the commission, or those acting for the commission on its land committee, refuse to pay the price asked and state the price which they would give, and say to the party that they must either take such price or take a litigation and condemnation suit?

Mr. FULLER: The question is confined to any one of the tracts respecting which you have spoken.

Q. I am speaking of any of those tracts which you have spoken of?

A. Where the commissioner——

The COURT: Answer the question one way or the other, limiting yourself to the sales about which you testified yesterday
689 within the park lines.

A. The commissioners said they should litigate if they could not buy it within the prices named; they said they could condemn property if they could not get it at prices they were willing to give. The prices mentioned in the deed that was frequently said.

Redirect examination by Mr. FULLER:

Q. Have you given all the purchases by the acre made by the South Park Commissioners in the East Park, north of the Phillips tract, omitting those where there were condemnation proceedings, in whole or in part, from Dec. 31, 1869, to Dec. 1, 1870?

A. I have.

Q. Have you given all the purchases by the acre made by the South Park Commissioners in the East Park and south of the Phillip's tract, omitting those where there were condemnation proceedings, from Dec. 31, 1869, to Dec. 1, 1870?

A. I have.

Q. Were the prices which you paid for those tracts the full value of each tract at the date of the purchase?

Mr. THOMPSON: You are examining him as an expert. I object. They have had their ten experts.

The COURT: In view of what you said I think he has a
690 right to ask that. In your cross-examination you seek to make an impression these people were forced by compulsion to part with the property for less than it was worth. The witness has a right to show before the jury the offer was all that the park commissioners thought the land was worth.

Mr. THOMPSON: Is that not making him an expert on values?

The COURT: It will not do to place the witness in an attitude of that kind before a jury and not allow him to explain.

Question repeated.

A. That was my judgment. It was the full value.

Q. At the time of the purchase?

A. At the time of purchase.

Q. Was not the corporation of the South Park Commissioners willing to pay what, in their judgment, was the full value at the date of each purchase rather than to have legal proceedings at all?

Objected to.

The COURT: I think they have a right to state what basis they went on.

Exception by plaintiffs.

A. That was the intention; that was our belief at the time.

Q. Was there not very large speculation going on in the vicinity of the park in 1869 and 1870?

A. Yes, sir; there was considerable speculation.

691 Q. Were the person owning property inside the lines of the park desirous of selling that property to the park? I believe you have testified heretofore on that subject?

A. They appeared to be.

Q. Did the South Park Commissioners resort in any instance to condemnation proceedings except for the public interest, in their judgment, to get the land at a reasonable price?

Objected to.

The COURT: You can answer the question.

A. We did not resort to any litigation where we thought we could buy it at its value. I would like to explain a little. I would like to say, if the court please, we never did resort to a condemnation outside of the true value, except it was for the purpose of perfecting the title. Sometimes we were driven to that necessity. You understand; we sometimes could not get title to the property.

Q. You know H. O. Stone very well?

A. Yes, sir.

Q. Were any threats used to Horatio O. Stone in reference to that sale?

A. I don't remember.

The COURT: He has already said there were no threats used upon any one.

A. There was no threats used in any instance. We always said if we could not buy we should condemn.

692 The COURT: He wishes to know if you said that to Stone?

A. Possibly it might have been said to Stone.

Q. You were asked some question about the house on the Gray piece. If Gray ever moved that house off it was because he bought it afterwards?

A. Yes, sir; I think it was.

Q. There is do doubt about it, is there?

A. Not a particle.

Q. Can you give the original acreage of the east part? It is a question I ought to have asked before.

A. Yes, sir; 593 acres was the original survey made by the engineers who first surveyed the park.

Q. That would be in 1869 and 1870.

A. 1869.

Q. I will ask you whether warranty deeds were given by Bliss, Gray, Platt, and Morton, and Clement?

The COURT: He said yesterday all of them did.

Q. I ask you whether the negotiations were to pay the full value of the land for a perfect title? Is not that so?

A. Yes.

Q. Were not the prices fixed before the examination of the title?

A. Yes, sir; generally were.

Recross-examination resumed:

Q. In saying that these prices which you paid—that is, the sales you have named, was its full value, what do you mean,
693 what value?

A. I should say that its value was such a value as I would be willing to take it — it were my property.

Q. What elements did you include in it? Did you give it any benefits by reason of the park itself, or did you exclude all those benefits?

A. I think there must have been some appreciation by the park.

Q. I mean these pieces you have named?

The COURT: I did not understand the answer.

A. I say there must have been some appreciation by the agitation of the park question which entered into the value.

Mr. THOMPSON: That you have fixed on this basis?

A. That were naturally existing in the prices at the time we made the purchase.

Q. In those prices you paid?

A. Yes, sir.

Q. Did you, in those prices that you paid, fix the value of this land the same as you would have fixed values of land lying outside of the park of similar land in that neighborhood? Is that your judgment?

Objected to.

The COURT: You may ask him to what extent lands in
694 that neighborhood, including this, improved in value by reason of the park project, and in anticipation of its establishment; and to what extent these sellers got the benefit of any such increased value.

Mr. THOMPSON: May I not put the question I ask?

The COURT: I do not care to institute a comparison between inside and outside land.

Mr. THOMPSON: Am I not entitled to the basis of the opinion which he has expressed?

The COURT: You are not entitled to ask what the lands inside are worth compared with outside lands; that I have held repeatedly, and if I am wrong it could be corrected by the Supreme Court. You are at liberty to ask him to what extent this land improved in value by the agitation of the park property and the anticipation of the park, and how much and to what extent these sellers availed themselves of this increased value.

Exception by plaintiff.

Q. I believe you did state the agitation and prospect of the

695 park had increased the value of real estate before the passage of the act?

A. Yes, sir.

And thereupon, in rebuttal, complainants introduced testimony orally, as follows:

696 JOHN A. McDOWELL was then called as a witness on behalf of plaintiff in rebuttal, &, having been duly sworn, was examined by Mr. THOMPSON, & testified as follows:

Q. What is your buis-ness?

A. At present I am a clerk in a broker's office; my buis-ness is that of civil engineer.

Q. Have you made an examination of the property, of the 80 acres lying between 59th and 63rd streets and fronting west on Stony Island avenue, and what is left of the 34-acre tract on the lake shore; have you made an examination of the property?

A. Yes, sir; I went over it several times.

Q. When did you make that examination?

A. About a week ago.

Q. Can you state to the jury the condition of that low land and its height above city datum?

Objected to.

Mr. THOMPSON: Did you take the levels on this west 80-acre tract with a view of determining the cost of leveling that up to a certain height?

A. I assisted in doing so.

Q. What was the result of that examination?

697 A. I found there was enough material on the tracts to level it up within a foot and a quarter of the average level of Stony Island avenue.

Q. Material enough on the tract?

A. Yes, sir.

Q. That is, on these ridges?

Objected to as leading.

Q. Explain.

A. There are sand ridges covered with scrub oak, and sloping off both ways between them is a swale or slough, as it is called, of low ground, that slopes both from the hills to the center and from the south to the northward.

Q. How much of that low ground is wet land?

A. There was not any of it wet to any consequence when I was there. It was subject to be wet land. It would be wet in a wet seasons about 30 acres; but of that that is absolutely low, that would be difficult to keep dry, there is only about 6 or 8 acres.

Q. Did you make a calculation of the expense that it would be to level that as you have spoken of?

A. Yes, sir.

Q. What, in your estimate, could that leveling be done for?

A. 25,000 to $30,000 would make it all a perfect level.

Q. What height would that have been above city datum?

A. About 6 feet or 6½. Stony Island avenue is about 7 feet
698 and $\frac{4}{10}$ on the average, and this would be a foot and a quarter below it is my recollection.

Q. Did you examine the east piece?

A. I went over and round it as best I could. I made no examination of the levels.

Q. Did you have a copy of this map with you at the time?

A. Yes, sir; I had that identical map.

Q. Does that represent this west 80 acres as you found it?

A. Very truthfully.

Cross-examination by Mr. GREEN:

Q. What business are you in now?

A. I am in the brokerage business.

Q. How long have you been in that business?

A. Not quite a year.

Q. What kind of brokerage?

A. Real estate broker's buis-ness.

Q. Where?

A. 56 Dearborn street.

Q. Are you alone or in partnership with somebody?

A. Neither. I am only an assistant or clerk to a man who is in the buis-ness.

Q. Who?

A. E. C. Crane & Co.

Q. Prior to the real estate buis-ness what buis-ness were you in?

A. Civil engineer buis-ness.

Q. Where?

A. I had charge of this building at its finishing. That was the last buisiness I did in Chicago.

Q. This building?

A. Yes, sir.

Q. Prior to that time what buisiness were you in?

A. Railroading.

699 Q. Whereabouts?

A. Mercer county, in this State; in Iowa Lee county, Des Moines county, Monroe county, Sioux county, and Wright county.

Q. For what road?

A. In the first place for a road that now belongs to the C., B. & Q.; it was then the Rapids road and afterwards the Mt. Pleasant road.

Q. Did you take these levels yourself?

A. No, sir; I held the rod.

Q. Who took the levels?

A. Mr. George W. Waite.

Q. How many levels did Mr. Waite take upon this 80-acre tract?

A. About 260; in that neighborhood; I have forgotten exactly; we took eight cross-sections and part of another.

Q. I only want it in a general way.

A. Less than 300.

Q. You held the rod?
A. I held the rod.
Q. From whom did you get the levels from which you made these calculations; from the memoranda made by Mr. Waite?
A. Yes, sir.
Q. How high did he tell you were the highest points on those ridges?
A. The highest points on those ridges, from the notes, was about 10 feet and, I think, $\frac{87}{100}$.
Q. Whereabouts is that?
A. On east sand ridge, near where the picnic-house now stands.
Q. How many feet did you say?
700 [A.] 10 and $\frac{87}{100}$ is my recollection.
Q. It was on that basis that you made your calculation?
A. That and all the others put together.
Q. How much of that ridge—the east ridge—is above Stony Island avenue?
A. I should think fully 6 acres of it.
Q. That was above Stony Island avenue?
A. Yes, sir.
Q. Of the ridge?
A. Yes, sir.
Q. The east ridge I am talking about.
A. That is what I am talking about.
Q. Of that 6 acres how much did it average above Stony Island avenue?
A. That is a calculation I did not make specifically.
Q. Have you got your figures with you?
A. No, sir; I have not; Mr. Waite has the book.
Q. Can you tell of the 6 acres how much it averaged above Stony Island avenue?
A. I could not tell by cutting it up in that way; we took it as a whole.
Q. The rest of the ridge; did it average above or below Stony Island avenue?
A. The ridge slopes off and the slopes do not all average above it.
Q. You say there is only 6 acres in that ridge above Stony Island avenue?
A. Yes, sir; 6 acres to any considerable extent.
Q. The rest is sloping?
701 A. Yes, sir; some of the same height of Stony Island avenue and some lower.
Q. How low is the lowest part?
A. $3\frac{1}{2}$ feet.
Q. Above city datum?
A. Yes, sir.
Q. How much was that below Stony Island avenue?
A. Nearly five feet; about 4 and $\frac{85}{100}$ feet.
Q. Take the middle of the swamp north and south, and how does that average in height?
A. That low place is about 4 to $4\frac{1}{2}$ feet.

Q. Is not the lowest of it less than four feet?
A. Yes, sir.
Q. What is the highest of it, taking the center?
A. I think 5 and $\frac{2}{100}$ or 5 and $\frac{3}{100}$ feet.
Q. Do you know how that averages?
A. Yes, sir.
Q. How much?
A. I have not figured it for that purpose. I can tell you by reference to my books if you want to know the specific amounts.
Q. In the 80-acre tract, how much of that do you call high land and how much low land?
A. About 20 acres of high land, and there is about 30 acres of it that is middle or sloping land, and about 30 of it low land.
Q. You say there is enough material there to fill it within a foot and one-quarter of Stony Island avenue?
A. Yes, sir.
702 Q. That would bring it about 6 feet above city datum?
A. Nearly 6 and $\frac{1}{2}$ feet.
Q. How high is Stony Island avenue?
A. 7 and $\frac{40}{100}$ feet. That would make it about 6 feet.
Q. Stony Island avenue, at the corner of 59th street, is how much above city datum—is it not 7 feet?
A. Within a fraction of it.
Q. It rises slightly as it goes south?
A. Yes, sir; undulating all the way. At the corner of 63rd street it is a few tenths higher.
Q. Do you know how much it would take to fill that tract to the height of Stony Island avenue if you did not take anything off the ridges?
A. No, sir; I have not figured that.

Re-direct examination by Mr. THOMPSON:

Q. I will ask you how much of this is swamp land? Did you see any swamp land in this 80 acres?
A. No, sir; I did not.
Q. Did you examine to see if there was any swamp land?
A. I walked all over it.
Q. Is it turfed all over?
A. Except in the ditches.
Mr. GREEN: What do you call swamp land?
703 A. There is a great variety of swamp land. I call swamp land land you cannot walk over without getting muddy. I call swamp land that land that requires drainage to make it safe to go over. I call swamp land that land which, perhaps, you could go over, but which is underlaid with soft peat, which would make it dangerous to break through; land that is covered with water and grown up with weeds.
Q. You know about the average level of the lake here, don't you?
A. I have some idea of it.
Q. How does the average level of the lake compare with the average level of this low land?

A. The average level of the low land is a little over 2 feet above the average level of the lake at this time. The lake at this time is pretty high. It was very high except the last day we were there. The northwest wind made it a foot and ½ lower.

Q. When the wind is blowing in shore how much higher would this land be than the level of the lake?

A. I do not think that is a question I can answer definitely.

Q. Would it be much, if any, higher?

704 A. It depends upon how long and how much wind.

Q. Suppose it was blowing in that way for several days.

A. I do not think it can blow water up on to any of the land, but I do not think the land would be much above high water made by a strong east wind—the lowest of it.

Mr. FULLER: They served a subpœna on the secretary of the south park to bring up the land ledger. There is nothing in the law that this book should be kept for the information of the public, although there is nothing in it we object to the public having; but in this instance I should like to know the object of bringing it into court. Of course it contains all purchases from one end of the park to the other.

Mr. THOMPSON: We want it to show what has been paid for these lands testified to.

The COURT: This is a public corporation; a corporation existing for the public benefit. It is required to keep a record of its proceedings. If there is anything in those records material to either

705 party in determining the controversy I suppose that party ought to have it. Your answer to this is it is simply a private record. It is a record of this corporation; in part, at least.

Mr. FULLER: In this sense I understand them to mean the ledger which contains the prices paid.

They COURT: They cannot refer to anything but these particular matters.

Mr. FULLER: It is not the proceedings of the commissioners; it is simply a book-keeper's ledger of amounts paid.

The COURT: I understand the deeds were all destroyed in the fire; I suppose that is the best record you have got, is it not?

Mr. FULLER: The abstract would show. I have no objection to it from the ledger.

The COURT: The point they make is this—the deed may not show the consideration.

Mr. FULLER: We will bring it up.

GEORGE W. WAITE, being recalled on behalf of plaintiff-, was examined by Mr. THOMPSON, and testified as follows:

Mr. THOMPSON: What is your business?

A. Civil engineer, surveying, and real estate.

706 Q. How long have you been a civil engineer?

A. I commenced in the spring of 1848.

Q. Give us some idea of your experience as civil engineer—what you have done—what work you have been connected with.

A. I was assistant engineer of the Galena & Chicago railroad; I

was chief engineer of that part of the C., B. & Q. from Aurora to Mendota; I surveyed, located, and built it; I was chief engineer of the St. Charles Branch railroad, or the Indiana & St. Charles Air Line railroad, and graded 30 miles and laid ten miles of track; I was chief engineer of a railroad through Iowa, from Lyons to Decatur, on the Missouri; I was chief engineer of the Chicago, Texas and Mexican Central, and surveyed and located 50 miles of it; I was engineer on the Texas-Mexican Central, from Victoria to Brownsville, on the rear branch; I located 320 miles of that.

Q. I think you stated, when you were on the stand, some offices you had held in the village of Hyde Park?

A. Yes, sir.

707 Q. Did you have anything to do with the drainage of that portion of Hyde Park lying in the vicinity of the property in question?

A. I did.

Q. State what.

A. The dates bother me some; I think, in 1865, as superintendent, I cut the drain on 63rd street, from Woodlawn avenue to the lake.

Q. That is on the south line of this property?

A. Yes, sir; and as one of the Cook county drainage commissioners, which I hold yet, I cut a ditch down through Pullman and a ditch from 87-street through the town of Lake, and partly through Hyde Park.

Q. Do you recollect the effect the cutting of the drain that you speak of on 63rd street through to the lake had on this west eighty acres?

A. It drew the surface water off whenever the ditch was kept open.

Q. Where?

A. At the lake.

Q. How many times have you surveyed or taken levels of this property in question, the west eighty acres?

A. A great many times.

Q. Is this map dated November 13, 1876, that has been used in evidence, made by you or from a survey of yours?

A. Yes, sir.

708 Q. I will ask you whether the roads and ditches shown upon that map were there in 1870?

A. They were.

Q. When those ditches that are shown on 59th and 63rd streets and these cross-ditches were open at the lake, what was the condition of this eighty?

A. The low part was dry.

Mr. GREEN: And the high part wet?

A. No; I suppose he was asking me about the low ground. I suppose the high ground would take care of itself.

Q. How long have you known the property?

A. I have known that property since 1859.

Q. Did you ever know water from the lake to back up onto any portion of that land?

A. No; I think not.

Q. I mean the west eighty?

A. I think not.

Q. Have you lately made a topographical survey of that west eighty?

A. I cannot say I made a topographical survey; I have taken levels crosswise of the eighty, but did not meander the ridge line.

Q. You have taken levels over it?

A. Yes, sir.

Q. The entire eighty?

A. Yes, sir.

Q. Give us some idea how you run those levels.

A. I run the first line 83 feet north of and parallel to the centre of the street.

Q. Which street?

709 A. 63rd street; in other words, I took it 50 feet north of the north line of the street.

Q. That is, you run a line from Stony Island avenue to the east line of the eighty?

A. Yes, sir; the next one I run 333 feet north, the next one I run 583 feet north, and the next one 833 feet.

Q. About how far apart were those?

A. 850 feet, until we got towards the north line, and then they were 300 feet.

Q. How many lines did you run north and south?

A. Didn't run any; I just took cross levels every fifty feet.

Q. You took levels every 50 feet on those lines?

A. Yes, sir.

Q. Did you make an estimate whether or not there was enough land on the high ridges to be scraped into the low portion of the eighty and what would be the result of levelling it up?

A. I did.

Q. What was the result of the examination?

A. I took an average of all the levels, 216 in number; took an average of the whole of them; I made it 6.17 feet above the datum; I took the average of each line and then I added all these averages together and divided it by eight, which gave the average of the whole level taken on the eighty.

710 Q. What is the average height of Stony Island avenue?

A. About seven feet.

Q. What was the condition of the lake shore piece in 1870?

A. I can only refer to that topographical map I made as chief engineer of the South Park; I think it represents the shore as closely as it can be; it was all divided into 100-foot squares and measured and levels taken.

Q. That the South Park Commissioners have?

A. Yes, sir.

Q. Have you a copy of it?

A. No, sir; I have not.

Q. Do you know whether there was any sand ridge upon that shore?

A. I wish you would describe it.

Mr. GREEN: Is not this a re-examination?

Mr. THOMPSON: We have not put in evidence how much high or low ground there was on the 34 acres.

A. Of that 34 acres there was probably about six acres of beach ridge, made by the beach by the shore.

Q. Where?

A. On the east side, next the lake; made by the action of the water.

Q. You mean six acres along the entire half mile?

A. Yes, sir.

Q. What was back of it?

A. Low ground.

Q. Is this low ground, with the exception of this spot here about the centre of it; is this the low ground in the 34 acres ground which is miry or ground which may be mown?

711 If there was no water you could mow it, but the water spoils the grass.

Q. The water stands on it?

A. Sometimes it is wiry grass and not fit for anything when it is mowed.

Q. I will ask you about this same low swale that runs across the west eighty; where does that run after it leaves 59th street, going north?

A. That swale had two outlets, one was about 61st street, where it cuts through the ridge and goes down to the pond hole, and the other was about 54th St., south of the hotel. Those are two natural outlets.

Q. Did that low ground continue up across the north end of the park?

A. Yes, sir; and broke through into the lake at 64th street.

Q. Which way does the water set in that swale, northeast or southwest?

A. The average is about northeast; there are elevations in the swale not all the same level.

Q. Do you remember prior to the time this north park was filled with the exception of where they dug out the lake?

A. Yes, sir.

Q. Prior to making this lawn here, do you remember whether this low ground was of the same character substantially as

712 the low ground here?

A. It was.

Q. And the price north of that still lower?

A. Yes, sir.

Q. Have you taken the height*h* of this lawn as now filled above city datum?

A. I have.

Q. State what it is.

Objected to.

A. I make the average of that land, from 59 street up to 66th, 6.81 feet, with the exception of a little part that connects with the

ridge a slope, which is .6 below the average of Stony Island avenue. The real height I make Stony Island avenue is 7.42. I said seven and a half feet and it is about that; that is the average height from the north line to the south line.

Q. I will ask you the height above city datum at the centre of Grand Crossing?

Objected to.

The COURT. You may answer the question.

Exception by defendant.

A. It is about 4.5 feet; in some places as low as 4.1, and in some places as high as 6 feet; the lowest I ever found was 4.1.

Q. That was right in the centre of Grand Crossing?

A. Near the watch factory, as the ground was before it was built.

713 [Q.] Was there any swamp land on this west eighty?

A. The is land we call slough land in this country; land that is subject to overflow, and has turf through it; sometimes can be moved and sometimes cannot.

Q. Did you make an estimate what it would cost to put scrapers in there and scrape these ridges and level up these places?

A. Yes, sir.

Q. What would it cost?

A. I think those ridges could be cut down and the timber removed and the land filled up to 6.17 feet for $30,000.

Q. 6.17 above city datum?

A. Yes, sir.

Cross-examination by Mr. GREEN:

Q. You spoke about land around the watch factory at Grand Crossing; that, you say, has been filled?

A. Some of it.

Q. That is a particularly low place?

A. What I mean to be understood was that was a level I took before the watch factory was built.

Q. As a matter of fact, right around the watch factory has all been filled, has it not?

A. It has.

The COURT: That is not the level of the watch factory now?

A. No, sir; those were the original levels as it was in a state of nature.

714 Q. Now, the land that you speak of as being in Grand Crossing, 4½ feet above city datum; there is some such land in Grand Crossing now?

A. Yes, sir.

Q. Is there some of the land that has residences upon it?

A. Yes, sir.

Q. Do you know if those people that reside there were attracted there because that was good residence property, or because they were there for manufacturing purposes?

A. I think they went there for manufacturing purposes.

Q. Is not the great problem in that land, since that place has been started, to try to drain it?

A. Yes, sir.

Q. And that problem has not been solved, practically, has it?

A. No, sir.

Q. This scraping business you speak of—all these ridges here have timber on them, haven't they?

A. They have.

Q. In Hyde Park any kind of trees are of considerable value?

A. They are.

Q. By this plan of scraping this off you may sacrifice all that timber?

A. Destroy the whole of it.

Q. Persons owning that land and desiring to subdivide it for residence property would not be very likely to sacrifice all that timber, would *he*?

A. I should not.

715 Q. It would be considerable more desirable to bring the filling and fill those places up, wouldn't it?

A. I would either do that or dig a lake.

Q. That is, you would sacrifice one part of the land to make the other?

A. Yes, sir; I think that would be the most sensible way to do it.

Q. That is, you would take two acres to make one.

A. Dig a small lake very deep and take the material out and fill the land.

Q. You would not sacrifice those ridges, would you?

A. It would not be natural.

Q. Did you compare your levels with the levels taken by Foster on that slough land?

A. I did.

Q. How did they compare?

A. They agreed.

H. W. HARMON was then called as a witness on behalf of the plaintiff- in rebuttal, & was examined by Mr. THOMPSON, and testified as follows:

(The witness produced the land ledger of the park commissioners, which was called for by the plaintiff-.)

716 Q. Have you any memoranda in your possession showing the cost of these lands to the park commissioners other than those which you have brought in here in this record?

A. None I recollect of now; nothing further than the cash payment the park made, which is all on the ledger.

Q. All in this book?

A. Yes, sir.

Q. Is there any account of the improvements of the Gray piece?

A. No, sir; no account of any improvements on the Gray piece beyond the consideration shown on the ledger.

Q. Or on the Platt piece?

A. Nor on the Platt piece.

Mr. THOMPSON: I think it is fair to state that the figures shown on the land ledger are the same as those which have been given.

Mr. GREEN: I will ask you whether the original vouchers, drafts, &c., were not destroyed by the great fire for these purchases?

A. No, sir.

Q. Have you got those?

A. We have the original vouchers which compare exactly with the amount of the ledger.

Adjourned to 2 o'clock p. m.

2 P. M.

Court met pursuant to adjournment.

717 Mr. THOMPSON: We have the deposition of Mr. L. B. Sidway; this deposition was taken in this case, and Mr. Sidway is now in Europe. It was taken with the idea of his going to Europe.

Mr. FULLER: Mr. Sidway is not in Europe, as I saw him in November.

Mr. THOMPSON: He is in Europe now, though; Mr. Bogue told me he was in Europe, as I went over to his office to see him.

Mr. FULLER: I should hardly think the ship could get over since they have told you.

Mr. THOMPSON: This is the second trip he made there, and this was taken at the time he was going there.

Mr. FULLER: I think, your honor, we will have to object to it, on the ground of its incompetency; your honor may look at it.

The COURT: I understand the objection to this deposition here is waived.

Mr. FULLER: Yes, your honor.

The COURT: It seems to me that when the sale of the land, which was introduced, they ought to be permitted to show the elements
718 which entered into the value. You may read the deposition and note an exception.

Mr. GREEN: We would like to note objections to particular questions as we go along.

The COURT: Yes, sir.

The deposition of L. B. SIDWAY was read in evidence on behalf of the complainants in rebuttal by Mr. THOMPSON, as follows:

719 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,

vs.

KERR *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 4th day of January, A. D. 1884.

Present: Mr. Fuller, for complainant; Mr. Dunlevy, for defendant.

L. B. SIDWAY, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. DUNLEVY, and deposes and says as follows:

Complainant Kerr and others appear, by J. C. Dunlevy, their solicitor, to take the deposition of L. B. Sidway, who is about starting for Europe, to be used in this case in case of a new trial or for other purposes.

Mr. Fuller appears for the South Park Commissioners and objects, because a proper foundation has not been made for the taking
720 of said deposition, nor is it competent to do so at this stage of the case.

Q. State your name, age, residence, and occupation.

A. L. B. Sidway: age, fifty-one years; residence, Chicago; occupation, merchant.

Q. You may state whether you are on the eve of departure for Europe.

A. I expect to leave here for Europe on the evening of the 6th.

Q. State whether you were a member of the Board of South Park Commissioners; and, if so, from what time to what time you served in that capacity.

A. I was one of the original appointees of the commission, and served for five years; was reappointed for five years, and resigned about a year before the expiration of the second term. The dates I do not have in my mind; I was continously a South Park Commissioner for about nine years from the origin of the commission.

Q. State, if you can, about what proportion of the land in the South Park was bought by the South Park Board from its organization to, say, about October 1, 1870; that is, from April, 1869, to October, 1870.

Objected to as incompetent.

A. It is so long since those things were in my mind that any answer to that would be really very indefinite.

Q. Give it approximately as near as you can; I do not expect you to be precise.

721 A. I should about half or more.

Q. Please state on what basis of value or as to what date the value of lands were fixed by the board which were purchased by them prior to October, 1870.

A. The board believed from the time of its organization up to the time of the Supreme Court decision, in what was known as the Mrs. Cook case, that they were required to pay the value of the land at the time that the park act became a law.

Q. Did they, the board, in the purchase of lands up to the date mentioned confine themselves and restrict themselves to its value at the date of the act becoming a law, to wit, about February 24, 1869?

Objected to as incompetent.

A. I would say, so far as it was possible in making that kind of trades, they did that—that is, we regarded the law as fixing the price

at which the land should be taken at that date and always claimed in our trades that was the law.

Q. Were the owners of lands with whom you dealt and of whom you made purchases informed by your board or your attorney that such was the law?

Objected to as before.

A. As I recollect now that matter always came up and was always an element of discussion in making the trades, we
722 claiming that we would not be allowed properly to pay any more than the land was worth at that time.

Q. Will you state whether, according to your observation and knowledge, there was any very considerable advance or increase in the price of lands in the immediate neighborhood of the South Park between, say, February, 1869, and January, 1871, or October, 1870?

A. Yes, sir; I should say there was a very considerable advance in the valuation.

Cross-examination by Mr. FULLER:

Q. Was there not a very large advance in property included in the South Park between 1868, before the meeting of the General Assembly and the time when the bill was introduced into the General Assembly, or the agitation begun, with the view of having a park?

A. My recollection is that with the introduction of the bill and its passage an advance at once set in which was continuous right along for the next two or three years.

Q. Did not that advance commence upon the agitation of having a park; the point I wish to direct your attention to is, did not property increase very largely as between what it was worth without a park and what it was valued at in view of a park?

723 A. Yes, sir.

Q. When do you expect to return from Europe?

A. I hope to get back somewhere about the 15th or 20th of March.

Q. You say it was discussed or mentioned in the purchases of land, as I understand you, that the board claimed that the valuation should be as of the date that the law went into effect; what did the sellers of property claim in regard to that?

A. That, I think, is going a little farther than I know. Different sellers of course had different ideas about it. I do not think I could give an intelligent answer to that question. Some sellers would take one view of the land values and others another, and some would introduce certain elements and others would not; it was really a question of trade.

Q. Matters were discussed in the negotiation as between buyer and seller (*and seller*) as is the case in any trade, is not that so? I mean, were not the sellers endeavoring to get as much as they could?

A. ——.

Q. In your judgment, did not the board pay a large value for the land they obtained by purchase? What is your judgment about it?

A. In my judgment, we always paid what appeared to me a good full value for the lands.

724 Q. Have you any distinct recollection as between the East Park and the other park of the South Park proper as to the proportion of your purchases?

A. I think so; I do not know I could give the dates exactly, but we purchased nearly all of the land in the west division before we had purchased half in the East, I should say.

Redirect examination:

Q. If you had not purchased the lands prior to the Cook decision, and at prices claimed by you to be the values as of the date Feb'y, 1869, how much greater sum, in your opinion, would the lands have cost you?

Objected to as incompetent, and also because this is not the proper stage for the question.

A. It would be very difficult for me to state any percentage or any sum, because I have not the costs here enough in my mind, but we would have, evidently, had to pay a great deal more for the land after the decision than what we did before—that is, at that time we would have had to pay much more for the land than what we did pay at an earlier stage.

Mr. FULLER: Have you any data by which you could form any sort of idea how much more?

A. Hardly that. My answer is made, however, from what I would regard as a very clear recollection of the advance that
725 took place at that time, but to say what the percentage was it would be impossible for me to do it.

Signature waived.

Endorsed: Filed Jan'y 9, 1884. W. H. Bradley, cl'k.

726 And the following questions *were* objected to:

Q. If you had not purchased the land prior to the Cook decision, and at prices claimed by you to be the value as to the date of February, 1869, how much greater a sum, in your opinion, would the lands have cost you?

Objected to by defendants.

The COURT: You may read the answer now.

Exception on behalf of the defendants.

GEORGE W. WAITE was then recalled on behalf of the complainants in rebuttal, & was examined in chief by Mr. THOMPSON, and tesfied as follows:

Q. Which tract is known as the Eaton tract?
Q. At your hand there. (Referring to map.)
Q. This 15 acres? (Indicating.)
A. Yes, sir.
727 Q. Marked on here Kimbark 15 acres?

A. That is it.

Q. November 23rd, 1870, is marked as the date of the purchase?

A. Yes, sir.

Q. Mr. Waite, I will ask you the tract I now indicate being 15 acres, lying along Stony Island avenue, and running down to 67th street; who was in possession of that land November 23, 1870?

Objected to; objection overruled; exception by defendants.

A. I was in possession of it, or the man I sold it to in Lake View. I cannot speak his name to day—Brainard. I sold it for Eaton to a man by the name of Edward Brainard.

Q. Prior to that date?

A. Well, about that date. I may not be able to give the date exactly. He was in possession of it, or Brainard was.

Q. At that date?

A. Yes, sir.

Q. For whom were you in possession?

A. I was Mr. Eaton's agent for the land; sold it for Mr. Eaton.

Q. Was it fenced?

A. I think not on the east line.

Q. It was fenced on the west line and on the south line?

A. Yes, sir.

Q. Was there a house on it?

A. Yes, sir.

Q. Was it occupied?

A. Yes, sir.

728 Q. Under whom was it occupied?

A. I think I rented it first; I think Brainard rented it afterwards; I cannot give the man's name.

Q. It was tenanted by whom?

A. Tenanted first, I think, by Mr. Brainard.

Mr. DUNLEVY: Was there an ejectment suit pending against Mr. Eaton in 1870, or when did Mr. Eaton lose possession?

Objected to.

The COURT: He may state as to the fact.

Mr. FULLER: It is entirely immaterial whether that suit was disposed of or not.

The COURT: Do you know whether there was any controversy about this land at the time the purchase-money was paid?

A. I know that Mr. Brainard claimed that he had an interest in the land when the money was paid; he told me the other day he claimed title.

The COURT: In that view you may answer the question.

A. It was pending after I sold to Mr. Brainard.

The COURT: Unless you know it was pending at the time

729 of the purchase, say so; if you do not recollect, say so.

A. I have a recollection—a very distinct recollection; I can tell you what I heard Judge Beckwith say.

Mr. STORRS: Never mind about that. The inquiry is whether there was an ejectment suit pending on the 23rd day of November, 1870?

A. Yes, sir; there was a suit pending at that time, but I do not know whether it was pending at the date the money was paid or whether it was outside the sale.

The COURT: Do you know when the money was paid?

A. I was present when a check was drawn and the money paid in the park commissioners' office.

Mr. STORRS: You do not know whether the suit was pending at that time or not?

A. I cannot say.

Q. Who did you represent there?

A. I represented Mr. Eaton there. I told the park commissioners——

Q. I did not ask you what representations you made?

A. I represented Mr. Brainard, to tell the truth about it.

Q. You represeneed Mr. Brainard, then, did you?

A. Yes, sir; I did at his request.

730 Mr. DUNLEVY: He has spoken about a conversation that took place at the time the money was paid in the park commissioners' office, and I ask him to give that.

Objected to.

The COURT: He may state what was said at the time about the title.

A. I told Judge Beckwith, the attorney for the park commissioners, when the park commissioners were present, some of them, that I had sold that land for Mr. Eaton to Mr. Brainard, and Mr. Brainard was in possession. I was requested to see Judge Beckwith; that he still claimed an interest in that land. I said that to Judge Beckwith.

Q. What did he reply?

A. He said he told the park commissioners that he considered Mr. Brainard's interest was wiped out by the suit, and he thought the park title was perfect.

Mr. STORRS: That is all you know about it?

A. Yes, sir; that is all.

Mr. SWETT: I believe we are done, so far as the testimony is concerned, but it is the desire of the complainants and of Judge

731 Dunlevy that the jury should go down to the premises and see the situation of the land, and see whether any of it is high land or any of it low land, and how low or how high it is, and how far from the depot, and as to its surroundings, and as to whether it is wet, as all these things are very essential in the valuation of a piece of land like this.

The COURT: The last question we will dispose of later. The first one is as to the introduction of this record, which was offered some time ago. You say this is a record kept by the park commissioners?

Mr. THOMPSON: It is a valuation made by the commissioners and filed in court under the law.

The COURT: I will allow you to give them notice now, and let them bring it in to-morrow if they have such a document. Now, as to this other question, it is not worth while to go to the premises unless the jury can see something that has not been shown to the jury here by witnesses who have taken levels. It is not necessary to see land to determine the character of the soil, as to whether it is
732 fertile or not. I suppose it is not claimed that it has a value upon that ground. I do not see now what facts the jury can get about this land that they did not already hear from the witnesses. They know where the fences run; here are the maps and diagrams of where all these things are.

Mr. SWETT: If the jury see it they can tell whether it is swampy. When land is described as wet land it may be very wet or it may be dewy, or it may not be wet at all. Now, there is nothing reduced in an ordinary observation by looking at it. I believe that the land as it stands by personal observation of it, and by somebody else talking about it.

The COURT: Do you desire, on the other side, that the jury shall see the land?

Mr. STORRS: No, sir.

The COURT (to the jury): Would you like to see the land, gentlemen of the jury?

The jury answering in the affirmative, the court remarked the jury might go, and suggested Mr. Foster and Mr. Waite to go
733 with them in company with the marshal to see the lands.

The COURT: Are you both through with your testimony, gentleman?

Mr. DUNLEVVY: Yes, sir, with the exception of this record.

The COURT: Well, there is no presumption of law that the original is in their possession.

Mr. DUNLEVVY: We will have a man here in the morning who will prove that the original was in their possession, or we will prove that the record was burned in the fire.

At this point court adjourned until Friday, at 10 a. m., A. D. 1884, and the jury in the meantime visited the premises in question.

DECEMBER 12TH—10 a. m.

GEORGE W. WAITE was then recalled on behalf of the defendant, testified as follows:

Mr. FULLER: You referred to a topographical map. I will call your attention to what was known on the last trial as the "brown paper map." Is that the map you referred to?

The map I referred to is that tracing map Radford made and sent up here on the last trial.

Q. That is a tracing map reproduced by Radford?

734 [A.] From a map I made that Olmstead and Vaux had in New York.

Q. That is what you referred to?

A. Yes, sir.

Mr. FULLER: We will offer Mr. Radford's deposition and the accompanying maps.

Q. The original map you made was destroyed?

A. The original map was destroyed, but a copy of it was kept in New York, and from that map a tracing was made and sent out here, made by Mr. Radford.

Mr. FULLER: It is not a copy, it is a reproduction of a map by reference to other maps which he attaches and the field notes of Sams.

A. Mr. Sams made a survey under me, Radford copied the map, and I examined it and thought it was a copy, and believe now it is a copy of the one I made.

Mr. FULLER: Is it admitted the original was destroyed by fire?

The COURT: I understand that it is admitted.

Mr. THOMPSON: If you say so personally I know nothing about it, but I have no hesitation in admitting it.

Mr. FULLER: The only reason why I did not read the depo-
735 sition was because we agreed upon the contents.

Mr. THOMPSON: Now that Mr. Waite has been recalled I should like to show him the files in the suit spoken of. The court got an impression that the suit in regard to pieces of the east front had been disposed of at the time of the purchase. There are the original files from the court showing that suit still pending.

A. I believe I was mistaken; there was a suit pending against me on June 22, 1872.

Q. Against yourself, Eaton, and Blackwell?

A. Yes, sir.

The COURT: The records may be considered in.

Mr. FULLER: When was it commenced?

A. July 28, 1870.

Q. When was it disposed *it*?

A. Dismissed in May, 1875. I think I am mistaken in another thing. I think when I said that Judge Beckwith said that the title was wiped out, I think he said he would wipe it out; I think he said he would wipe out that title. I think I was mistaken in that respect.

Q. That was dismissed in May, 1875?

A. It appears so.

736 Q. It was a suit pending in favor of whom?

A. Kimbark against Eaton and others.

Q. Who were the others?

A. It was Edward Eaton, George W. Waite, and Levi Blackwell?

The COURT: Let it be considered in evidence to the extent of showing the parties to the case, &c.

GEORGE NICHOLS was then called as a witness on behalf of the plaintiff, and, being first duly sworn, testified as follows:

Mr. DUNLEVY: What relation do you bear to the estate of H. O. Stone, deceased, as to the real estate?

A. I was with Mr. H. O. Stone from October, 1872, to the time of

his death, and since that time I have been acting as agent for the trustees to the present time.

Q. What does your agency embrace?

A. Looking after all matters pertaining to the estate.

Q. Especially real estate?

A. Yes, sir.

Q. State whether you had charge of that paper and of this abstract as such agent?

A. This paper has been in my possession constantly since 1872.

Q. That seems to be a copy sworn to. Do you know where the original is?

A. The original has not been in my possession. I think
737 it was destroyed at the time of the great fire, along with Mr. Stone's papers, as they were all destroyed.

Q. Do you remember about that paper being restored after the fire?

Objected to.

Q. Do you know whether there was such a paper?

A. This copy was made prior to my acting for the estate.

The COURT: Do you know there was an original, of which that is a copy?

A. No, sir.

Q. You never saw the original?

A. I never did.

Q. How long has this abstract been in your possession?

A. Only about a year.

Q. From whom did you get this?

A. From the administrator of the estate of Kales. Mr. Kales was the sworn attorney, and had charge of the papers.

Q. Mr. Kales was the South Park attorney?

Objected to.

Mr. DUNLEVY: We offer the ante-fire abstract.

But no such paper was introduced.

ORRIN YEAGER was then called as a witness on behalf of
738 the plaintiff, &, having been duly sworn, was examined by Mr. DUNLEVY, and testified as follows:

Q. Where do you reside?

A. 89 Congress St., Chicago.

Q. Where did you reside at the time of the great fire of 1871?

A. I lived on Michigan avenue, near 35 street.

Q. In what were you engaged at the time—in whose office?

A. In the employ of H. O. Stone.

Q. Do you remember anything of a sale by H. O. Stone to the South Park Commissioners of the 34-acre tract of land?

A. I do.

Q. State whether at that time there was a contract prepared which saved Mr. Stone harmless with reference to that tract of land between him and the South Park Commissioners?

Objected to.

The COURT: State what you know about the contract?

Mr. STORRS: Of your own knowledge.

A. There was a contract existing between Stone and the South Park Commissioners at that time.

The COURT: Q. Did you ever see it?

A. Yes, sir.

Mr. DUNLEVY: Do you know what became of it?

A. It was burnt up.

Q. Did you make a copy of that contract?

A. I did.

739 Mr. STORRS: From what did you make it?

A. I really don't remember now.

Q. Did you make it from the contract itself, or from your recollection of it?

A. My impression is I made it from my recollection at the time.

The COURT: Did you ever see the original?

A. Yes, sir.

Q. Have you a distinct recollection of what was in the original?

A. That is the way I remember it now from my recollection of the original at the time.

Q. When did you make this copy?

A. A couple of years after the fire.

Mr. STORRS: Give the date.

A. May 15, 1872.

Q. The contract had already been destroyed?

A. Yes, sir.

Q. You made that from your recollection of a contract you had once seen?

A. Yes, sir.

Mr. DUNLEVY: Did you consult with anybody?

A. Mr. Stone and I together.

Q. Did you consult with the park commissioners?

A. I don't think I did.

Q. Your affidavit is on the back of that; are you certain it is a substantial copy?

Objected to.

A. Yes, sir.

The COURT: If he says there was a contract between them,

740 and that contract is destroyed and he recollects the contents, he can state it. You can state it in a general way—the substance of the contract, which you say you saw?

A. There has been some litigation in regard to the property, and Stone was fearing some litigation, and I remember he made some agreement with the South Park Commission-rs.

Q. In writing?

A. Yes, sir; that they were to pay all the costs and do all the litigating themselves; stand back of him.

Mr. DUNLEVY: Does that paper embrace it?

Objected to.

Mr DUNLEVY: State what the contract was made between Stone and them at the time.

A. That was the substance of it, just as I have said.

Q. Substantially that you have in your hand?

A. Yes, sir.

Q. Did you know anything about the condition of Stone's real estate at the time he was real estate dealer and you was his clerk?

A. Yes, sir.

Q. State whether in connection with that sale you know whether an abstract was delivered to the South Park Commissioners at the time he made his deed.

A. I could not say now.

741 [Q.] Did you see this abstract before while you were in Stone's office—see if you recognize it?

Mr. FULLER: That would be immaterial any how.

A. If it was in Stone's possession at the time I worked for him of course I saw it; he had a great many abstracts; I could not tell that particular abstract; I could not tell one from another; but if he had it at the time I undoubtedly had charge of it.

Q. Do you know whether the abstract was delivered at the time?

A. I could not say now.

Cross-examination by Mr. FULLER:

Q. Do you recollect the names of the parties in the litigation you refer to?

A. Cushman against Stone.

Q. Cushman against Stone and Monroe?

A. Yes, sir.

Mr. DUNLEVY: Were the papers burned?

A. Everything Stone had was burned up.

Q. Was that suit restored after the fire?

A. Not while I worked for him it was not.

GEORGE NICHOLS was then recalled on behalf of the complainants, and testified as follows:

Mr. DUNLEVY: Where did you get this abstract?

742 A. I got that from a gentleman in the Howland block, who had written he had a paper belonging to the estate of Stone. I went down to see about it, and he turned it over to me about a year ago.

Q. Whose office was it?

A. I have forgotten the name, but I think it was the administrator of Mr. Kales; whoever it was they turned the abstract over to me; some gentleman in the Howland block.

Q. You did not get it of Kales personally?

A. No, sir.

Q. Nor of the South Park Commissioners?

A. I did not.

PAUL CORNELL was then recalled, and testified as follows:

Mr. THOMPSON: In August, 1870, was there any improvement at that time of the Midway Plaisance or the East Park?

A. Not in 1870.

Mr. FULLER: I offer in evidence a certified copy from the superior court of the order dismissing the case which has been alluded to, Cushman *vs.* Stone, and deciding that case in favor of the defendant it was dismissed August 30, 1873.

Mr. THOMPSON: We object to that; it may have been by agreement.

The COURT: It may go in.

It was read as follows:

742¼ UNITED STATES OF AMERICA, } *ss*:
State of Illinois, County of Cook, }

Pleas before the honorable the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court at a regular term of said superior court of Cook county, begun and holden at the court-house in the city of Chicago, in said county and State, on the first Monday, being the fourth day, of August, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-eighth.

Present: The Honorable William A. Porter, chief justice; Joseph E. Gary and John A. Jamison, judges of the superior court of Cook county; Charles H. Reed, State's attorney; T. M. Bradley, sheriff of Cook county.

Attest: AUGUSTUS JACOBSON, *Clerk.*

Be it remembered that heretofore, to wit, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and seventy-three, the same being one of the days of the August term of the superior court of Cook county, the following among other proceedings were had in said court and entered of record, to wit:

742½ *Bill.*

WILLIAM A. W. CUSHMAN
vs. } 315–27007.
HORATIO O. STONE and HENRY S. MONROE.

This day again come the parties to this suit, by their solicitors respectively, as aforesaid, and this cause coming on now to be heard upon the exceptions of the defendants filed herein to the finding of Henry T. Steele, Esq., to whom this cause was referred for hearing, after arguments of counsel and due deliberation of the court said exceptions are sustained, and it is ordered by the court that said bill of complaint be, and the same is hereby, dismissed at complainant's costs for want of equity. Therefore it is considered by the court that the defendants do have and recover of and from the complainants their costs and charges in this behalf expended and have execution therefor.

And the complainants, having entered his exceptions herein, prays an appeal from the decree of this court to the supreme court of this State, which is allowed him on filing herein his appeal bond in the penalty of two hundred and fifty dollars without security, it being agreed by the parties hereto that said bond may be filed without security, said bond to be filed within twenty days from this date.

742¾ STATE OF ILLINOIS, } ss:
County of Cook. }

I, Patrick McGrath, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain order made and entered of record in said court in a certain cause lately pending in said court on the chancery side thereof, wherein William A. W. Cushman was complainant and Horatio O. Stone *et al.* were defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago this 12th day of November, A. D. 1884.

[SEAL.] P. McGRATH, *Clerk.*

743 Mr. FULLER: I also offer a decision of the supreme court in favor of Stone at the September term, 1873; that is, the order confirming the decree of the court below, which I find in the 69th Illinois ——

The COURT: You do not mean to offer that in evidence?

Mr. FULLER: An appeal was taken. I wish to offer the order of the court to show that the decree of the court below was affirmed.

It was admitted that the decree was affirmed by the supreme court, reported 69th Ill's, page 516.

PAUL CORNELL was then recalled by the South Park Com'rs, & testified as follows:

Mr. FULLER: Examine the paper which I show you and state what it is.

A. Mr. Fuller has just shown me what appears to be the opinion of James P. Root, that attorney of the commission at that time.

Q. You say I hand you what appears to be signed by him; is not it the opinion?

A. It is the opinion.

Q. And is it not signed by John M. Wilson?

A. Yes, sir.

Q. He concurs with James P. Root, doesn't he?

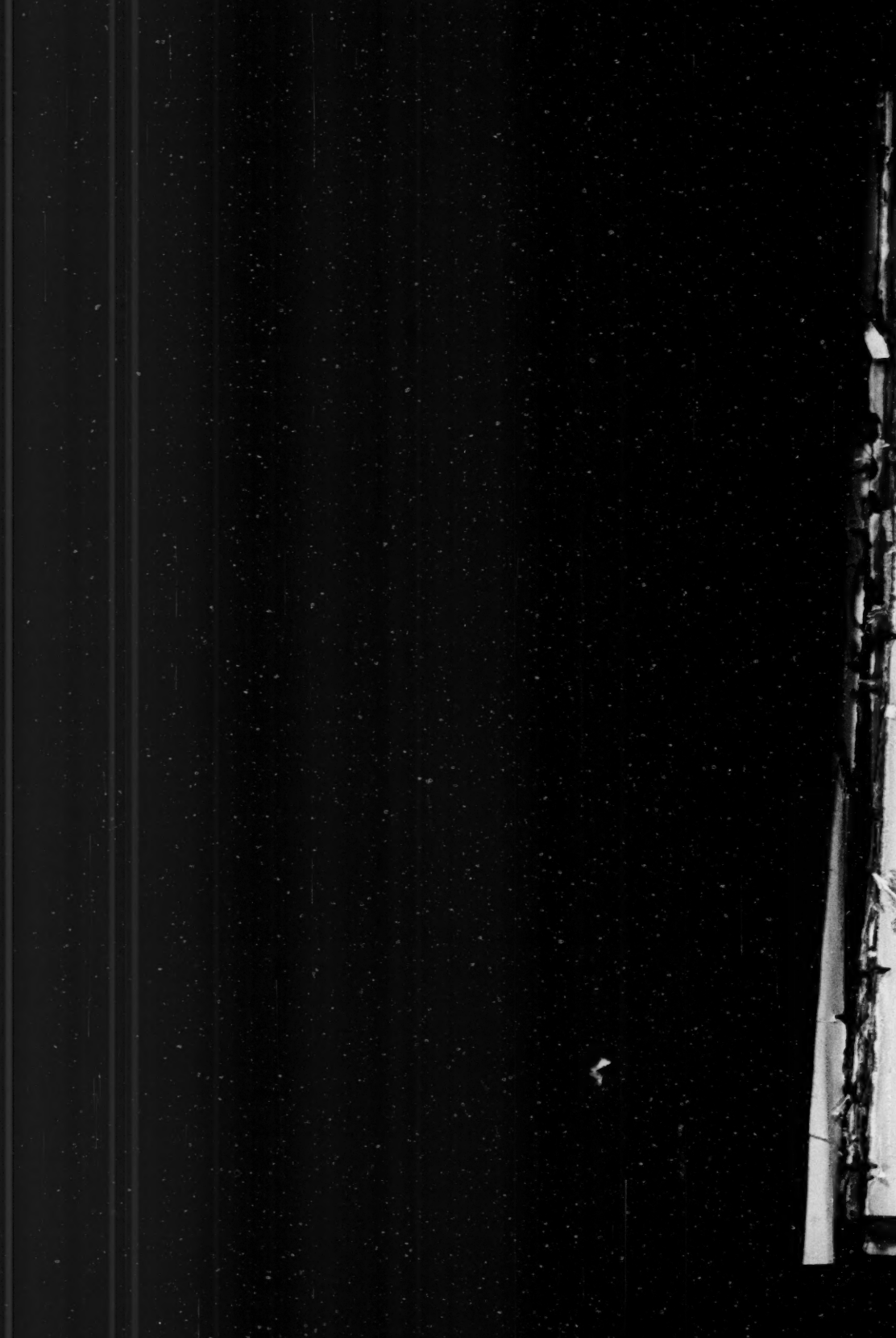
A. He does.

Q. I don't know whether this map (indicating) was technically put in.

The COURT: It is considered in.

Mr. FULLER: That is the Waite topographical map.

744 The COURT (referring to opinion): I think this may go in as tending to show that the South Park Commissioners did not pay less than they thought the land was worth on account of the adverse claim.



Mr. THOMPSON: We take an exception.

The COURT: Of course you only offer it as tending to show the basis upon which the South Park Commissioners bought it.

A. Yes, sir.

The opinions of James P. Root & John M. Wilson, & Waite's topographical map.

(Here follows map marked p. 744.)

745 To the South Park Commissioners:

I have examined the title to east fr'l half of northeast fractional quarter of sec-. 24, 38, 14, E. 3d P. M., as shown by abstract of Chase Bros., and continuation by Shortall & Hoard. Catharine A. Wood was the patentee, & joins with her husband in a power of att'y in 1853 to Nelson Wood to convey the land. The acknowledgment does not state that the contents were made known to Mrs. Wood. By the statute of 1847 a *femme covert* could join with her husband. She being a non-resident, in the execution of a deed it required only that she should be known to the officer. She was the same as a *femme sole*. The power of att'y was executed in New York. I think the acknowledgment substantially good.

A bill is pending now by Cashman to set aside the trustee's deed from Monroe to Stone, but an examination of the bill does not seem to give any claim to him. The foreclosure of that trust deed seems to be regular.

I think warrant deed from H. O. Stone & wife will make title good in commissioners.

JAMES P. ROOT.

I concur in the above.

JOHN M. WILSON.

Which was all the evidence offered by either of said parties.

746 And thereupon the court charged the jury as follows:

Charge to the Jury.

KERR *v.* SOUTH PARK COM.

GENTLEMEN OF THE JURY:

You are to determine by your verdict the fair cash value of two tracts of land on the 27th day of August, 1870, namely, the west 80 acres of the southwest quarter of fractional section 13, less three lots of one acre each, and the southwest fractional quarter of the same section, which the parties have agreed contained 34 acres at the date named.

You are to say now, from all the evidence before you, what those lands were worth fourteen years ago. The owner is entitled to their full cash value at that time; that is to say, to what he could have realized for them in cash, not at a forced sale, but at a sale made to any one able to buy them for cash or on time and terms equivalent to cash.

A number of witnesses testified that the agitation of the park project, the anticipation that the Legislature would authorize the appropriation of lands to establish a park in the vicinity of the
746½ present South Park, and the introduction of the bill into the Legislature, which finally became a law on the — day of February, 1869, materially enhanced the value of lands embraced in the present park lines, as well as the lands adjacent thereto and in that vicinity. Any resulting benefit to the lands within the proposed park from this and other causes, such as the growth and prosperity, or the anticipated growth and prosperity, of the city of Chicago, you should take into account in determining the amount that will fairy compen-l sate the owner. But a number of witnesses also testified, and there seemed to be less disagreement upon this point than upon some others, that the passage of the park act, its ratification by the people, and the fixing of the proposed park boundaries by the Legislature gave to the lands immediately fronting upon and in the vicinity of the park, including the Midway Plaisance and the boulevards, an additional value solely on account of their being without the proposed park lines, but adjacent to the park, the plaisance, and the boulevards, or near enough thereto to receive the special benefits resulting from such improvements. In the nature of things the lands within the proposed park, and which were to constitute it, could not have been then specially benefitted, and the owner of the lands in question should be allowed nothing on the ground that his property was thus specially benefitted. Even the witnesses who testified
747 upon this branch of the case for the owner admitted that the outlying lands received a benefit from their location or relation to the park which the lands constituting the park did not receive.

Sales of property of like character and quality, similarly situated and affected by the same causes, made under circumstances likely to produce competition among bidders, are sometimes resorted to in determining the value of lands; but inasmuch as the lands adjacent to and in the vicinity of the park, plaisance, and boulevards received a special benefit, and were subject to a special burden by reason of the existence of the park, plaisance, and boulevards, their situation and that of lands embraced within the park lines were relatively so different that outside sales afforded no just grounds for determining the character of the lands taken for the park, and hence all evidence of such sales was excluded, and you are again instructed that there is no such evidence before you.

It is for you to say whether any of the experts in giving their opinions of the value of the two tracts in question were influenced, if at all, by knowledge of sales of lands which received a special benefit by reason of their peculiar relation to the park, plaisance, and boulevards. To the extent that any of the witnesses based their opinions upon a knowledge of such sales, their evidence should be disregarded. It is for you to say, however, whether any of
748 the witnesses gave opinions upon this basis.

The owners of the two tracts, the value of which you are to determine by your verdict, introduced evidence of one sale within

the park lines, and the park commissioners introduced evidence of a number of other inside sales. How far these sales were of lands similar in quality and character to the two tracts in question you will determine from the evidence before you. It is for you to say whether the vendees for any reason parted with their lands for less than, in their opinion, they were fairly worth; and whether the park commissioners endeavored to and actually purchased such lands for less than their full cash value. You have been told that the board of park commissioners was a rich and influential corporation, and that the owners of the lands within the park lines, rather than litigate with a powerful adversary, were liable to and did take less than their property was worth. It is proper in this connection you should be reminded that the board of park commissioners is not a business corporation engaged in making money for its stockholders. The commissioners act for the public and discharge a public trust. The park is not their private property, and it was their duty as public officers to resort to the mode prescribe by the laws of the State in acquiring title to property within the park lines when in their judgment the owners demanded more than such property was worth. You are required to determine
749 the full cash value of the two tracts submitted to your judgment, because the owners and the park commisoners have thus far been unable to agree as to their value, and this you are to do without regard to the character or influence of the parties. It is wholly immaterial how long this litigation has been pending; how much this owner has expended or may hereafter expend in litigation; whether the park commissions took possession of the land with or without consent; that one of the parties is a corporation and the other a natural person, male or female, old or young, rich or poor, influential or uninfluential, and if you permit your minds to be influenced in any degree by such immaterial matters it will be because you are deficient in sense of duty or intelligence. This is not a case in which the owner is entitled to the full cash value of his lands and something more as punative damages, or smart money.

The witnesses were wide apart in their estimates of the value of the property. Their opinions you will weigh in connection with all the other evidence in the case. You heard them examined in chief and cross-examined. Ample opportunity was thus afforded you to judge of their intelligence, the soundness of their judgment, their disposition to speak the truth, and the basis upon which they judged of the value of the lands. These opinions will be considered in connection with the evidence of inside sales as well
750 as all the other facts before you. Mere speculative opinions and theories should not weigh against facts. In the opinion of some, land has a speculative value as well as a real value. Real estate is sometimes bought on time, or largely on time, with the hope and expectation that the buyer will be able to dispose of it at an advance before his payments become due, thus realizing a profit. The opinions of men who thus deal in real estate for speculation should be received and weighed with caution. It is for you to say whether any of the witnesses who have testified in this case were of this

speculative class, and gave to the lands in question a mere speculative value.

As you have already been told, the owner is entitled to the full cash value of his lands at the time the park commissioners took possession of them, namely, on the 27th of August, 1870. Situated as they then were, what were they worth in cash or on terms equivalent to cash in the market, if a market then existed for such lands? It is to be borne in mind—it was then known—that these lands were within the park lines and designated for park purposes. What would any one needing lands for residence, business, or any other purpose have paid for them in cash? You are not at liberty to place a value upon these lands upon the basis of what some one might have been willing to have bought them for on time at the date named for purely speculative purposes. If the evidence
751 shows that lands within the park had a market value, then your duty is comparatively easy; but if, on the other hand, the evidence fails to show the existence of a market value at that time for lands within the proposed park lines, then it would be your duty to ascertain the value of the two tracts by the best and most satisfactory lights afforded by the evidence.

In determining the value of the land at the date fixed you are to regard them as they then were, without reference to possible increase in value thereafter from the park or other surrounding improvements. You were permitted to visit and view the lands the better to enable you to apply the evidence, and not that you might see them in their relation to present surroundings, influences, or improvements.

Whereupon the jury retired.

752 KERR — *v.* SOUTH PARK COMMISSIONERS.

TUESDAY, *Dec. 16th.*

The jury, after being out since yesterday afternoon, and having failed to agree, were brought before the court.

The COURT: Gentlemen, you have not been able to agree on a verdict, I am informed.

The FOREMAN: We have not, your honor.

The COURT: Is there any prospect of an agreement?

The FOREMAN: In my judgment, I think we may get together.

The COURT: I sent for you to know what the prospect was, and whether you needed any further aid from the court. You can now return to your room.

A JUROR: Would it be proper for us to carry with us the instructions of the court? We differ a little as to some points.

The COURT: Perhaps the better way would be to state the point in the case to which you desire the court to repeat its instructions.

Mr. SWETT: We are willing they should take the whole instructions.

753 Mr. STORRS: I think the suggestion of the court is a very good one, to instruct them on the specific points required.

Mr. SWETT: Every man may have a point.

The COURT: I think it is better to state the precise point, and the court will repeat its instructions.

Mr. SWETT: I will suggest they might retire, and propound their inquiries in writing.

The COURT: If any juror wishes the aid of the court, he can propound his inquiry now, whatever it may be; I have not the slightest idea what it is.

A JUROR: I would like to have the instruction repeated as to what constitutes the market value. The court gave some instructions in regard to that, and there is some difference among us as to it.

The COURT: You were told yesterday that if, from the evidence, there appeared to have been a demand or a market value for this land at the time, namely, on the 27th of August, 1870, your duty would be comparatively easy; that you would have to be guided by that market; but, if you found there was no market value for lands situated as these lands were at that time, then you would be obliged, with the aid of all the testimony before you, to determine the value as best you could. Now, what you are to do is simply determine, as I instructed you yesterday, the value of that land on the 27th of August, 1870. The market
754 value was what land would have sold for in cash, or on such time and terms as would be equivalent to cash. Was there any demand; was there any market for land situated as this was at that time? What evidence is there before you, if any, showing that the lands within the park lines, or the designated park lines, were changing hands after the passage of the park act? You were told yesterday that in estimating the value of these lands the owners were entitled to any benefit or appreciation that they received in consequence of the agitation of the park project, and the expectation that some park would be established in that vicinity. If you believe the lands in that neighborhood were all benefited in this particular, these lands in common with others, they should receive the benefit of that appreciation. In order to determine what that appreciation was you have a right say from the evidence what these lands were worth independently of and uninfluenced by this cause. Take the value of the lands before there was any agitation of the park project, and before this expectation existed, and add to that, if you can, the increased value. In that connection, however, you will bear in mind that many of the witnesses, most of them, perhaps, testified that the final passage of the park act, and its ratification, resulted in special benefit to the lands around the park and in its vicinity, and that the lands within the park lines did not
755 receive this special benefit. For this special benefit you will allow nothing.

A JUROR: Do I understand the court we have any evidence of sales outside of the park?

The COURT: You have no right in making up your verdict to consider what lands outside of the park lines sold for. Witnesses were examined as to what they knew of outside sales; this was to show they were qualified to give opinions which might amount to something on the question of the value; that they were familiar

with values and property in that neighborhood. In determining the value of these lands you will consider the sales within the park lines, the opinions of witnesses, and all the other evidence in the case, and say what you think they were worth. It is proper, however, I should also say, that sales within the lines, provided they were made under circumstances indicating that the owners received what they thought their property was reasonably worth, and the opinions of witnesses who spoke of real rather than speculative values, should have greater weight than mere speculative values. The opinions of witnesses who spoke of actual cash values—that is to say, what property of that kind was worth, what it would have sold for, what the owners could have realized for it in cash, or on terms equivalent to cash—are to be preferred to the opinions of witnesses who spoke of the lands in a mere speculative sense;

756 what they would have sold for on time, the purchaser expecting an advance which would enable him to sell them, realizing a profit, before the maturity of his payments. Such a sale would be a mere speculative sale, and, if you believe any of the witnesses gave the value of the lands on that basis, their opinions are worth less, and should amount to less, than the opinions of witnesses who spoke on a different basis, namely, the actual value in cash or its equivalent.

Mr. SWETT: I desire the court to note an exception.

And thereupon the jury retired and returned their verdict.

757 Whereupon the complainants Kerrs moved to set aside said verdict, and for a new trial, in the words & figures following, to wit:

United States Circuit Court for the Northern District of Illinois. On the law side for the purpose of ascertaining the value of property.

SUSIE N. KERR *et al. vs.* SOUTH PARK COMMISSIONERS.

And now come the complainants and move the court to set aside the verdict of the jury in the above-entitled cause, and for a new trial, and assign the following reasons in support of said motion:

1. The court erred in admitting improper evidence on behalf of the defendant against the objection of the complainants.

2. The court erred in admitting evidence on behalf of the defendant as to the value of the property in question in 1867.

3. The court erred in admitting evidence on behalf of the defendant as to the value of the property in question prior to any park agitation.

4. The court erred in refusing to admit proper evidence offered on behalf of said complainants.

758 5. The court erred in refusing to admit evidence offered by the complainants of sales of property outside of the park limits.

6. The court erred in refusing to admit evidence offered by the complainants of sales of property outside of and not abutting upon the park, boulevards, or plaisance.

7. The court erred in refusing to admit evidence offered by the complainants of sales of property not abutting upon the park, boulevards, or plaisance, but within half a mile of the property in question, made in the summer and fall of 1870, said sales of land being sales of land otherwise similarly situated and of like character with the property in question.

8. The court erred in refusing to admit evidence offered by the complainant of sales of property not abutting upon the park, boulevards, or plaisance, but within half a mile of the property in question, after the passage of the park act, and prior to the selection by the park commissioners of land for the park, said sales being of land similar in character and otherwise similar in situation.

9. The court erred in giving improper instructions to the jury.

10. The court erred in instructing the jury as follows: That "but a number of witnesses also testified, and there seems to be less disagreement upon this point than upon some others, that the
759 passage of the park act, its ratification by the people, and the fixing of the proposed park boundary by the Legislature, gave to the lands immediately fronting upon and in the vicinity of the park, including Midway Plaisance and the boulevards, an additional value solely on account of their being without the proposed park lines, but adjacent to the park, plaisance, and boulevards, or near enough thereto to receive the special benefits resulting from such improvements. In the nature of things the lands within the proposed park, and which were to constitute it, could not have been thus specially benefited, and the owner of the lands in question should be allowed nothing on the ground that his property was thus specially benefited."

11. The court erred in instructing the jury as follows: "Even the witnesses who testified upon this branch of the case for the owner admitted that the outlying lands received a benefit from their location or relation to the park, which the lands constituting the park did not receive."

12. The court erred in instructing the jury as follows: "Sales of property of like character and quality similarly situated and affected by the same causes, made under circumstances likely to produce a competition among bidders, are sometimes resorted to in determining the value of land, but inasmuch as the lands adjacent to and
760 in the vicinity of the park, plaisance, and boulevards received a special benefit and were subject to a special burden by reason of the existence of the park, plaisance, and boulevards, their situation and that of the lands embraced within the park were relatively so different that outside sales afforded no just ground for determining the character of the land taken for the park, and hence all evidence of such sales was excluded, and you are again instructed that there is no such evidence before you."

13. The court erred in instructing the jury as follows: "It is for you to say whether any of the experts in giving their opinions of the values of the two tracts in question were influenced, if at all, by a knowledge of sales of lands which received a special benefit by reason of their peculiar relation to the park, plaisance, and boulevards

to the extent that if any of the witnesses based their opinions upon a knowledge of such sales, their evidence should be disregarded."

14. The court erred in instructing the jury as follows: "Mere speculative opinions and theories should not weigh against facts. In the opinion of some land has a speculative value as well as a real value. Real estate is sometimes bought on time or largely on time, with the hope and expectation that the buyer will be able to dispose of it at an advance before his payments become due, thus realizing a profit. The opinions of men who thus deal in real
761 estate for speculation should be received and weighed with caution. It is for you to say whether any of the witnesses who have testified in this case were of this speculative class, and gave to the lands in question a mere speculative value."

15. The court erred in instructing the jury as follows: "As you have already been told, the owner is entitled to the full cash value of his lands at the time the park commissioners took possession of them, namely, on the 27th of August, 1870. Situated as they then were what were they worth in cash, or on terms equivalent to cash, in the market, if a market then existed for such lands? It is to be borne in mind it was then known that these lands were within the park lines and designated for park purposes. What would any one needing lands for residence, business, or any other purpose, have paid for them in cash?"

16. The court erred in instructing the jury as follows: "You are not at liberty to place a value upon these lands upon the basis of what some one might have been willing to have bought them for on time at the date named for purely speculative purposes."

17. The court erred in instructing the jury as follows: "Now, what you are to do is simply to determine, as I instructed you yesterday, the value of that land on the 27th of August, 1870. The market value was what the land would have sold for in cash, or on
762 such time and terms as would be equivalent to cash. Was there any demand; was there any market for land situated as this was at that time? What evidence is there before you, if any, showing that lands within the park lines or designated park lines were changing hands after the passage of the park act? You were told yesterday that in estimating the value of these lands the owner was entitled to any benefit or appreciation that they received in consequence of the agitation of the park project and the expectation that some park would be established in that vicinity. If you believe the lands in that neighborhood were all benefitted in this particular, these lands in common with others, they should receive the benefit of that appreciation. In order to determine what that appreciation was you have a right to say from the evidence what those lands were worth independently of and uninfluenced by this cause, take the value of the lands before there was any agitation of the park project and before this expectation existed, and add to that, if you can, the increased value. In that connection, however, you will bear in mind that many of the witnesses, most of them perhaps, testified that the final passage of the park act and its ratification resulted in special benefit to lands round the park and in its vicinity, and that lands

in the park did not receive this special benefit. For this spe-
763 cial benefit you will allow nothing."

18. The court erred in instructing the jury as follows: "You have no right in making up your verdict to consider what lands outside of the park line sold for."

19. The court erred in instructing the jury as follows: "In determining the value of these lands you will consider sales within the park lines, the opinions of witnesses, and all other evidence in the case, and say what you think they were worth. It is proper, however, I should also say that sales within the lines, provided they were made under circumstances indicating that the owners received what they thought their property was reasonably worth, and the opinions of witnesses who spoke of real rather than speculative values, should have greater weight than mere speculative values."

20. The court erred in instructing the jury as follows: "The opinions of witnesses who spoke of actual cash value—that is to say, what property of that kind was worth, what it would have sold for, what the owner could have realized for it in cash or on terms equivalent to cash—are to be preferred to the opinions of witnesses who spoke of the land in a mere speculative sense and what they would have sold for on time, the purchaser expecting an advance which would enable him to sell them, realizing a profit before the maturity of his payments. Such a sale would be a mere
764 speculative sale, and if you believe any of the witnesses gave the value of the lands on that basis their opinions are worth less, and should amount to less, than the opinions of witnesses who spoke on a different basis, namely, the actual value in cash or its equivalent."

21. The charge of the court tended to, and did, mislead the jury in arriving at their verdict.

22. The verdict of the jury is not sustained by the evidence.

23. There is no evidence in the case to support the verdict of the jury.

JOHN C. DUNLEVY,
LEONARD SWETT,
LEAMING & THOMPSON,
Complainants' Solicitors.

Endorsed: Filed Jan'y 8, 1885. Wm. H. Bradley, clerk.

765 Which motion was argued and overruled by the court.

Signed and sealed this sixth (6th) day of October, A. D. 1885, *nunc pro tunc* as of August 13th, A. D. 1885.

WALTER Q. GRESHAM. [SEAL.]

Endorsed: Filed October 6, 1885. Wm. H. Bradley, clerk.

766 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the

foregoing transcript to be a true, perfect, and correct copy of the mandate from the Supreme Court of the United States filed May 17th, 1882; of the order of said circuit court redocketing the case of the date of May 20th, 1882; of the order of the 12th of June, 1882; of the bill of revivor filed on the 1st day of November, 1882, by the appellees, and the order of the said circuit court entered on the said first day of November, 1882; of the order of said court of the date of February 18th, 1884; of the orders of said court made and entered, respectively, on the 24th & 27th of May, 1884, and the 11th day of June, 1884; of the orders entered, respectively, 2d, 3d, 4th, 5th, 6th, 8th, 9th, 10th, 11th, 12th, 13th, 15th, 16th, and 22nd of December, 1884, also on the 10th and 12th days of January, 1885; of the certificate of the clerk of said court of the 12th of January, 1885; of the finding and verdict of the jury to the chancery side of said court; of the decree of the date of January 20th, 1885; of orders of the date of the 13th and 14th of March, 1885, respectively; of the appeal bond filed March 14th, 1885; of an order of said court of the date of the 13th of August, 1885; of an order of said court of the 6th of October, 1885; of the certificate of evidence filed
767 October 6th, 1885, *nunc pro tunc* as of August 13th, 1885, all of said orders, entries, and files having been made, entered, and filed in said circuit court in said cause wherein Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, &c., are the complainants, and the South Park Commissioners *et al.* are the defendants, as the original of the same now remain in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this fifteenth day of October, 1885.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1885.]

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 1142. Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, appellants, *vs.* The South Park Commissioners. Filed October 19, 1885.

117 U.S. 379 & 388

ABSTRACT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1885.

11,462

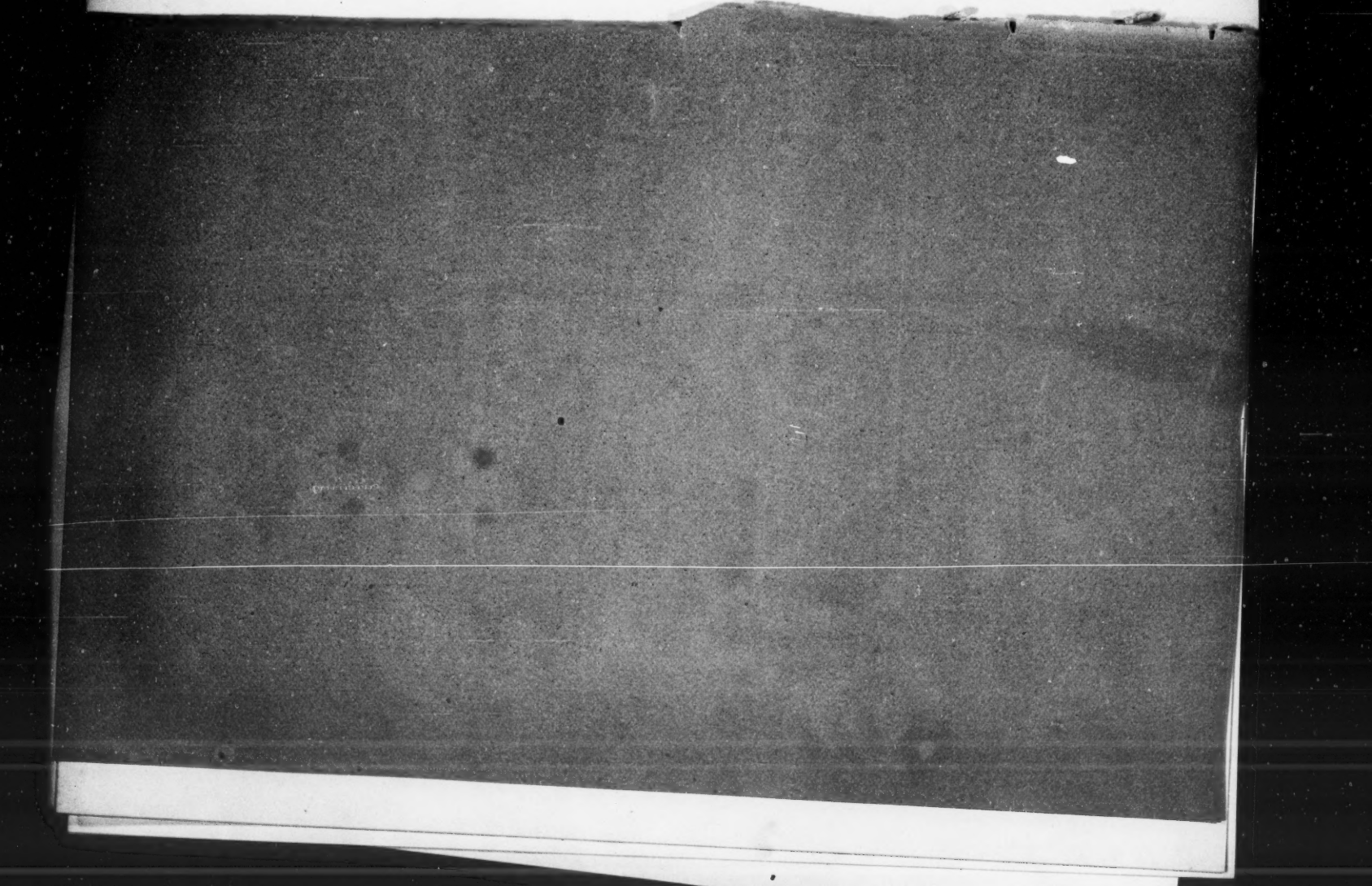
SUSIE M. KERR ET AL., APPELLANTS,

vs.

THE SOUTH PARK COMMISSIONERS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT,
NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.



SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR ET AL., APPELLANTS,

vs.

THE SOUTH PARK COMMISSIONERS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT,
NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

ABSTRACT OF RECORD.

1 PLACITA, January 20, 1885, of the December term, 1884, of said court.

2 Mandate, dated May 13, 1882, and filed May 17, 1882, affirming the decree in the cause of *William P. Kerr* v. *The South Park Commissioners and others*, as follows:

Whereas, Lately in the Circuit court of the United States for the Northern district of Illinois, before you, or some of you, in a cause between William P. Kerr, complainant, and John M. Wilson, Paul Cornell, Leverett B. Sidway, George W. Gage, Chauncey T. Bowen, The South Park Commissioners, Charles B. Phillips, and Charles H. Atkins, defendants, wherein the decree of said Circuit court, entered in said cause on the 8th day of October, A. D. 1878, is in the following words, viz:

"This cause coming on to be heard upon the bill, answers, and replications, and proofs, and having been argued by counsel, and the court being sufficiently advised in the premises, it is ordered, adjudged and decreed that the defendant, The South Park Commiss, ioners, pay to the complainant, William P. Kerr, and his assignees the value of the premises on the twenty-seventh day of August, A. D. 1870, known and described as the south fractional half of section thirteen, in township thirty-eight, north of range fourteen, east of the third principal meridian, except lots 9, 10 and 15, in Chas. B. Phillips' subdivision of 26 acres off the west side of the S. W. $\frac{1}{4}$

of said section thirteen, according to plat of same recorded in the recorder's office of Cook county, in book 98 of maps, page 9, and the east half of said south-west quarter of said section thirteen, together with interest thereon from the twenty-seventh day of August, A. D. 1870, at the rate of six per cent. per annum, upon the conveyance of said premises by the complainant, William P. Kerr, and his assignees, claiming under him since the commencement of this suit, by deed, which shall release to the South Park Commissioners all interest of the said complainant and his assignees. And it is further ordered that the value of said premises required to be paid be ascertained as follows: A jury shall be empaneled in this court, on the law side thereof, to hear the evidence submitted by both parties, and said jury shall determine by their verdict the value of the land hereinbefore described on the twenty-seventh day of August, A. D. 1870, the time when possession was taken by the South Park Commissioners, and the verdict shall be certified by the clerk to the chancery side of this court, and the amount so found shall be considered as the value of said premises on the day aforesaid, unless set aside or changed by the further order of this court. And it is further ordered that the complainant, William P. Kerr, make a deed, and procure deeds to be made by all persons claiming under him since the commencement of this suit, conveying to the South Park Commissioners the premises aforesaid, when they shall pay the amount found to be due, with interest from the twenty-seventh day of August, A. D. 1870, at the rate of six per centum per annum. And the court denies any relief to the complainant as to the east half of the south-west quarter of section 13, as aforesaid, and it is ordered that the bill of complaint be dismissed as to that part of the premises.

And it appearing to the court that the South Park Commissioners have commenced proceedings to condemn the undivided one-quarter of the west half of the south-east quarter of section twenty-four, in township thirty-eight, north, of range fourteen, east of the third principal meridian, another of the tracts described in the bill, and belonging to the complainant, it is ordered that all questions touching the same be reserved for the further order of the court. It is further ordered that the question of the costs be postponed for the further consideration and order of the court."

As by the inspection of the transcript of the record of the said Circuit court, which was brought into the Supreme court of the United States by virtue of an appeal taken by the South Park Commissioners, and a cross-appeal taken by William P. Kerr, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and eighty-one, the said cause came on to be heard before the said Supreme court, on the said

transcript of record, on appeal and cross-appeal, and was argued by counsel; on consideration whereof, the court being equally divided in opinion, it is now here ordered, adjudged and decreed by this court, that the decree of the said Circuit court, in this cause, be and the same is hereby affirmed.

Each party paying the costs of their appeal in this court

12th December, 1881. You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States ought to be had, the said appeals notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme court, the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighty-two.

Costs of.....
Clerk $.....
Printing Record $.....
Attorney $.....
$.....

Taxed by James H. McKenney, Clerk of the Supreme Court of the United States.

6 May 20, 1882. Order redocketing said cause on motion of M. W. Fuller, solicitor for South Park Commissioners, death of William P. Kerr suggested, and leave to either party to file bill of revivor.

7 November 1, 1882, bill of revivor filed by South Park commissioners.

15 Order reviving cause in name of Susie M. Kerr, Joseph B. Kerr and Rosa L. Kerr, executors and trustees under the will of William P. Kerr, deceased.

19 Motion by South Park Commissioners for framing of issues to be submitted to the jury.

20 June 11, 1884. Order overruling said motion.

At Law.

21 December 2, 1884, in the "adjourned October term, 1884," jury called.

29 December 16, 1884. Jury return verdict.

30 January 10, 1885, of December term, 1884, hearing on motion for new trial.

January 12, 1885. Order upon motion for new trial as follows:

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS.

Susie M. Kerr, Rosa L. Kerr,
and Joseph B. Kerr,
Executors, etc.
vs.
South Park Commissioners.

This cause coming on upon the motion of the plaintiffs Kerr, that the verdict hereinbefore, on the sixteenth day of December, 1884, rendered, determining the value of the south fractional half of section thirteen, in township thirty-eight, north of range fourteen, east of the third principal meridian, except Lots 9, 10 and 15, in Charles B. Phillips' subdivision of twenty-six acres off the west side of the south-west quarter of said section thirteen, according to plat of same recorded in the recorder's office, of Cook county, in book 98 of maps, page 9, and the east half of said south-west quarter of said section thirteen, on the 27th day of August, A. D. 1870, in accordance with the decree entered in the above entitled cause, on the chancery side of this court, on the 8th day of October, 1878, be set aside, and a new trial awarded; and the court having heard the arguments of counsel, and being fully advised in the premises, overrules said motion, and directs said verdict to be certified by the clerk, as provided in said decree. To which said plaintiffs, Kerr, now and here except.

IN CHANCERY.

31 January 12, 1885, there was filed in the clerk's office the certificate of the clerk as follows:

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS.

Susie M. Kerr, Rosa L. Kerr and
Joseph B. Kerr, Executors, etc.
vs.
South Park Commissioners.

I, William H. Bradley, clerk of said court, do hereby certify that the following is the verdict rendered on the 16th day of December, A. D. 1884, by the jury empaneled in the above entitled cause to determine the value of the south fractional half of section thirteen, in township thirty-eight, north of range fourteen, east of the third

principal meridian, except lots 9, 10 and 15 in Charles B. Phillips' subdivision of 26 acres off the west side of the south-west quarter of said section thirteen, according to plat of same recorded in the recorder's office of Cook county in book 98 of maps, p. 9. and the east half of said south-west quarter of said section thirteen, on the 27th day of August, A. D. 1870, as provided in the decree of this court in the above entitled cause, entered on the 8th day of October, A. D. 1878, on the chancery side of this court, to wit: "We, the jury, fix the value of the tracts of land in controversy, comprising one hundred and eleven (111) acres, as of the date of the 27th of August, 1870, at one hundred and fifty-five thousand four hundred dollars ($155,400.) W. H. Colard, Theodore Gestefeld, J. B. Platt, Frederick Marquardt, John Ryan, S. A. Ballou, Geo. W. Dean, W. S. Corning, W. T. Laws, Albert T. Jones, Silas Enyart, Jerome Burnett," which said verdict is hereby certified by the clerk to the chancery side of said court, as by said decree and the order overruling said motion to set aside said verdict, directed.

As witness my hand and the seal of said court, this 12th day of January, A. D. 1885.

[SEAL.] WM. H. BRADLEY, *Clerk.*

34 January 20, 1885, in the "December term, 1884, of said court," decree as follows:

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.—IN CHANCERY.

Susie M. Kerr *et al.*
vs.
South Park Commissioners.

This cause coming on to be heard upon the pleadings, orders and decree of October 8, 1878, herein, and the mandate of the Supreme court herein, filed May 17, A. D. 1882, and the verdict of the jury rendered upon the law side of this court on the 16th day of December, A. D. 1884, (the motion to set aside the same having been overruled) and certified by the clerk to the chancery side of this court determining the value of the tracts of land described in the decree herein entered on the eighth day of October, A. D. 1878, to have been on the twenty-seventh day of August, A. D. 1870, the sum of $155,400; and the evidence, rulings and charge of the court upon the trial of the issue as to said value, it is hereby ordered, adjudged and decreed that said amount of $155,400 be, and is hereby adjudged to be the value of said tracts of land at that date. And it appearing to the court that the said complainants cannot at present comply with said decree of October 8, 1878, and that various

claims are set up as against said complainants to said value, or portions thereof, it is ordered that the South Park Commissioners pay into court the said sum of $155,400, with interest thereon from the 27th day of August, A. D. 1870, at the rate of six per cent. per annum to the date of such payment, and that upon such payment into court, the said South Park Commissioners be discharged from further liability for interest in the premises, and that the distribution of said money when paid into court be reserved until further order. And the South Park Commissioners exhibiting to the court the pleadings, orders, proofs and decree of August twenty-sixth, 1882, in a certain cause on the chancery side of this court, wherein the South Park Commissioners was complainant, and Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr executors, etc., of William P. Kerr deceased, and others were defendants, wherefrom it appears that on the twenty-ninth day of November, 1879, the sum of eighty-two thousand eight hundred dollars, and on the twenty-sixth day of February, 1880, the sum of seventy-two hundred dollars, of the moneys of the said South Park Commissioners came to the hands of said Kerrs, complainants in this case, and that the sum of forty-two hundred and twenty dollars and nineteen cents was paid into this court in that suit December first, 1882, as appears from the order of this court in that cause on that day entered, all these moneys being paid on account of the lands in this cause mentioned, and it further appearing that the sum of twenty-five thousand dollars was paid into court in this cause on the eighteenth day of February, 1884, on account of said lands. It is ordered that said several sums of eighty-two thousand eight hundred dollars with interest from November twenty-ninth, 1879; seventy-two hundred dollars with interest from February twenty-sixth, 1880; forty-two hundred and twenty dollars and nineteen cents as of the date of payment into court herein provided for, and twenty-five thousand dollars with interest from February eighteenth, 1884, be applied on said principal sum of $155,400 and interest, and that the South Park Commissioners pay into court under this decree only the balance thereby arrived at, together with the commission provided by law thereon, and the sum of two hundred and fifty dollars the commission on the sum of twenty-five thousand dollars so paid February 18th, 1884, as aforesaid and interest thereon from that date. And it is also ordered that the deed of James R. Doolittle referred to in said decree of August 26th, 1882, in the cause of the South Park Commissioners against Susie M. Kerr and others, may be executed and delivered to said South Park commissioners, and that thereupon said sum of forty-two hundred and twenty dollars and nineteen cents may be taken from the registry of this court by said complainants Kerr, without prejudice to any appeal in said cause in which said money was so paid into court and deed directed to be delivered as aforesaid.

37 March 13, 1885, in the adjourned March term of said court, 1885, motion by complainants for appeal.

38 March 14. Appeal allowed and bond filed and approved.

41 August 13, 1885, in the "July term of said court, 1885," motion as follows:

Susie M. Kerr *et al.*
vs.
South Park Commissioners *et al.* } *In Chancery.*

Now come the complainants, and by Isham and Lincoln, their solicitors, and present to the court an alleged copy of the testimony taken before the jury heretofore empaneled in this cause, and move that the same be certified by the court and made a certificate of evidence and a part of the record in this cause, to which motion the defendants, the South Park Commissioners, by M. W. Fuller, its solicitor, objects, and thereupon the court takes the motion under advisement.

41½ Order upon motion as follows:

Susie M. Kerr *et al.*
vs.
South Park Commissioners *et al.* } *In Chancery.*

This matter coming on upon the motion of the complainants, Kerr, herein entered August 13, 1885, and the court being now sufficiently advised in the premises, sustains said motion and signs the copy of evidence presented on that day, *nunc pro tunc* as of said August thirteenth, 1885.

42–765 Certificate of evidence or bill of exceptions tested as signed and sealed, October 6, *nunc pro tunc* as of August 13, 1885. The motion for new trial appears in this bill or certificate, and is entitled "On the law side for the purpose of ascertaining the value of property."

767 Clerk's certificate.

Record prior to Mandate.

The decree of January 20, 1885, states that the cause came on upon the pleadings, orders and decree of October 8, 1878, and the mandate.

By stipulation, the printed copy of the record filed in this court in the cause of *The South Park Commissioners* v. *William P. Kerr*, November 13, 1878, and which gives the pleadings, orders and decree of October 8, 1878, is filed (exclusive of the evidence) as part of the record herein.

The following contains all of the pleadings necessary to be considered, the references being to the pages of the printed copy.

51 Consolidated engrossed bill, filed by W. P. Kerr, January 27, 1875.

115 December 4, 1875. Amendments filed.

121 Answer of South Park Commissioners to consolidated engrossed bill as amended, filed February 3, 1876.

148 Replication, filed February 7, 1876.

257 Decree of October 8, 1878, given *ante* in mandate.

MELVILLE W. FULLER,
Of Counsel for Appellee.

117-379+388

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR ET AL., *Appellants*,
vs.
THE SOUTH PARK COMMISSIONERS, *Appellees.*
No. 1142.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ADDITIONAL RECORD.

UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF ILLINOIS.

FRIDAY, January 23, 1885.

Present: Hon. Walter Q. Gresham, Circuit Judge.

Susie M. Kerr *et al.*
vs.
South Park Commissioners *et al.* } *In Chancery.*

And now come the South Park Commissioners, by M. W. Fuller, their solicitor, and pay into court the sum of one hundred and forty-three thousand one hundred and four dollars ($143,104) under the decree of this court

herein entered on the twentieth day of January, A. D. 1885, including the commissions therein directed to be paid.

NORTHERN DISTRICT OF ILLINOIS, ss.

I, William H. Bradley, clerk of the Circuit court of the United States, for said Northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the 23d day of January, A. D. 1885, in the cause wherein Susie M. Kerr *et al.* are the complainants and South Park Commissioners *et al.* are the defendants, as the same appears from the original records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 4th day of December, A. D. 1885.

[SEAL.] WM. H. BRADLEY, *Clerk.*

117-379 & 388.

117-379 & 388

Office Supreme Court U. S.
FILED.
NOV 24 1885
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

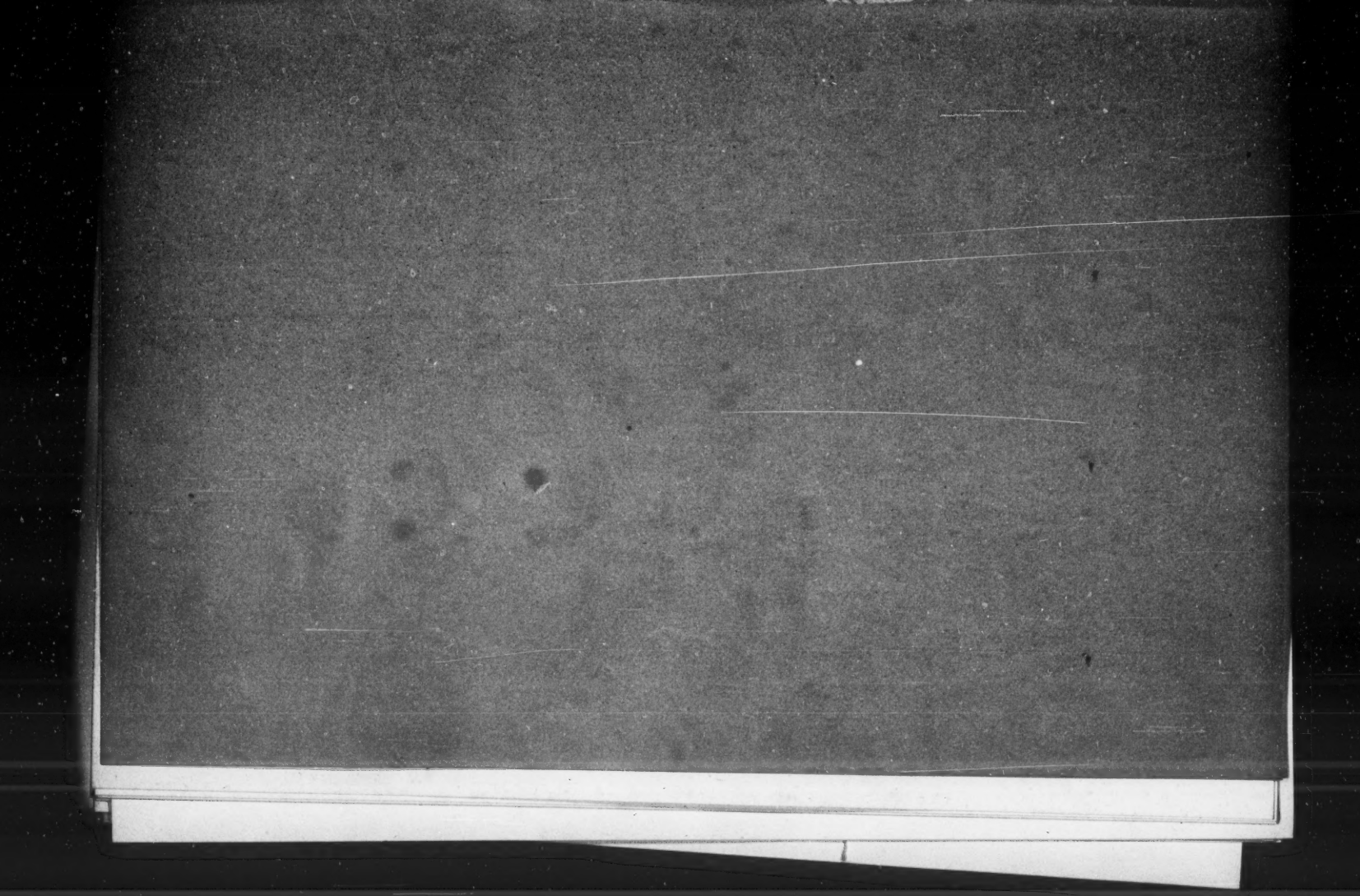
SUSIE M. KERR ET AL., APPELLANTS,
vs.
THE SOUTH PARK COMMISSIONERS.
No. 1142.

BRIEF

ON MOTION TO STRIKE OUT BILL OF EXCEPTIONS OR CERTIFICATE OF EVIDENCE.

MELVILLE W. FULLER,
OF COUNSEL FOR APPELLEE.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.



IN THE

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No. 1142.

BRIEF

ON MOTION TO STRIKE OUT BILL OF EXCEPTIONS OR CERTIFICATE OF EVIDENCE.

MAY IT PLEASE THE COURT:

This is a motion to strike out an alleged bill of exceptions, or certificate of evidence, upon the ground that it was improvidently signed, sealed and filed, and forms no legitimate part of the record.

The motion is made in accordance with the settled practice in Illinois in such cases.

W., St. L. & P. R. Co. v. *The People*, 106 Ill., 654.

Warner v. *Kelly*, 5 Bradwell (Ill. App.), 559.

Magill v. *Brown*, 98 Ill., 235.

Burst v. *Wayne*, 13 Ill., 664.

The facts necessary to be considered will be found set forth in a printed abstract of the record herewith filed, and may be stated as follows:

Upon the 8th day of October, A. D. 1878, a final decree was entered in this cause, and upon the 12th of December, 1881, that decree was affirmed by this court. The mandate issued May 13, 1882, and will be found on page 2 of the record and page 1 of the accompanying abstract.

The decree of October 8, 1878, settled the rights of the parties, and determined that the South Park Commissioners should pay to the complainants, Kerr, the value of certain real estate in said decree described, and as under the constitution of the state the compensation to be made for lands taken in the exercise of the power of eminent domain must be ascertained by jury, the court directed, by said decree, a jury to be empaneled upon the law side of the court to determine that value, the decree providing also that such verdict should be certified back to the chancery side of the court. A jury was accordingly empaneled on the 2d day of December, 1884, at the "adjourned October term, 1884," of said court, and a trial being had, returned a verdict on the 16th day of said month of December. The complainants Kerr thereupon moved for a new trial on the law side of the court, which motion came on on the 10th day of January, 1885, which was one of the days of the "December term, "1884," of the court, and was overruled on the 14th day of January, 1884, and the clerk directed to certify the verdict to the chancery side, which he did, and the verdict, as so certified, was filed accordingly on that day. Upon the 20th day of January, 1885, which was of the "*December* term, 1884," of said court, a decree was en-

tered in the cause, adjudging the value of the land to be the amount named in the verdict. Upon the 14th day of March, of the "adjourned March term, 1885," of said court, an appeal was perfected by the complainants Kerr to this court.

On the 13th day of August, 1885, of "the *July* term, 1885," of said court, complainants Kerr presented to the court what they claimed was a certificate of the evidence given upon the trial before the jury, and asked the court to sign and seal the same, to which the South Park Commissioners objected. On the 6th day of October said certificate was signed and sealed *nunc pro tunc*, as of said 13th day of August.

The terms of the United States Circuit court within and for the Northern district of Illinois, as fixed by statute, are the third Monday of December and the first Monday of July in each year (United States Revised Statutes, 1875, p. 120, Chapter 8, Title 13, Sec. 658), and that court also has and has had for many years, under its eighteenth rule, adjourned terms on the first Mondays of March, May, and October, "at which any judicial business may be transacted the same as at any regular term. (Baker's Rules U. States and State Courts, Illinois (1878) p. 103; Blatchford's Rules, etc., of U. S. Courts, p. 904). The application to the court to sign this certificate of evidence, or bill of exceptions, was made seven months after the motion for a new trial had been overruled, and after the lapse of the March and May adjourned, or rule terms, and the December statutory regular term.

There was no report of the judge of what passed upon the trial at law, no notes of trial signed or certified to by

the judge, no certificate of evidence, no bill of exceptions, prior to or other than the paper signed October 6th, as of August 13th, and no order of court and no consent of parties extended the time for presenting such certificate or bill.

I.

The general rule is that a bill of exceptions, statement of facts, or certificate of evidence cannot, in the absence of consent, be presented to and signed by the court and made part of the record of a cause after the adjournment of the term at which the final judgment or decree was entered, unless the time for so doing has been extended.

Chief Justice MARSHALL said, in *ex parte Bradstreet*, 4th Peters, 107, that: "If a party intends to take a bill of "exceptions, he should give notice to the judge at the "trial, and if he does not file it at the trial he should move "the judge to assign a reasonable time in which he may "file it. A practice to sign it after the term must be "understood to be a matter of consent between the par-"ties, unless the judge has made an express order in the "term allowing such a period to prepare it." And this court in *Muller et al.* v. *Ehlers*, 91 U. S., (1st Otto) 249, holds that a bill of exceptions cannot be signed after the adjournment of the court for the term at which the judgment was rendered unless an extension of time was given for that purpose; and through Mr. Chief Justice WAITE, says: "Upon the adjournment for the term the "parties were out of court, and the litigation there was "at an end. The plaintiff was discharged from further "attendance, and all proceedings thereafter in his absence "and without his consent were *coram non judice*. The

" order of the court, therefore, made at the next term di-
" recting that the bill of exceptions be filed in the cause
" as of the date of the trial was a nullity." So in *Flanders* v. *Tweed*, 9 Wallace, 425, and in effect in *Generes* v. *Bonnemer*, 7 Wall., 566, it was ruled that the trial judge could not make a statement of facts after the lapse of the term.

There is no power to sign a bill of exceptions after the expiration of the term, unless the time is extended or there is consent or there are circumstances equivalent to consent or order.

In Illinois it is the settled practice that a bill of exceptions must be reduced to writing, and signed and filed during the term at which the final judgment and decree is entered, except in cases where the counsel consent, or the judge by an entry on the record, directs, that it may be prepared in vacation, and signed *nunc pro tunc*; and that in all cases it must appear on its face to have been taken and signed at the trial.

Evans v. Fisher, 5 Gilman, 456.
W. St. L. & P. R. Co. v. *The People, &c.*, 106 Ill., 653.
Burst v. *Wayne*, 13 Ill., 667.
Magill v. *Brown*, 98 Ill., 235.

In *Goodrich* v. *Cook*, 81 Ill., 41, the court in effect approved of the authorities holding that a court cannot make an order in a case after it has been finally decided and passed beyond its control, but that time may be given to prepare a bill of exceptions or certificate of evidence, and as it did not appear when the certificate of evidence in that case was signed, held that the presumption was that it was presented and signed at the right time, or the

judge would not have signed it; while in *Magill* v. *Brown*, 98 Ill., 235, as it affirmatively appeared that the bill of exceptions was neither presented to nor signed by the judge, until after the expiration of the period fixed for filing the same, it was properly stricken out.

Upon the principle that the act of the court ought not to be allowed to prejudice a party, it has been held that where a certificate of evidence (*People* v. *Williams*, 91 Ill., 87,) or bill of exceptions (*Magill* v. *Brown*, 98 Ill., 235,) has been duly made out and presented to the judge in apt time, his neglect or refusal to sign it should not deprive the party of his rights. The non-action of the judge when the certificate or bill is duly presented is equivalent to an extension of time.

The 38th section of chapter 51, of the revised statutes of Illinois, (Hurd's Rev. Stat. of 1881, page 526), which has been in force since 1849, is as follows: "On the trial "of every suit in chancery oral testimony shall be taken "when desired by either party."

Under this section certificates of the evidence are signed by the judge and filed, in order to make such evidence part of the record, which it would not otherwise be.

In that particular it is impossible to see any difference between such certificate and a bill of exceptions when the latter is used to set forth the entire evidence upon a trial. In *Smith* v. *Newland*, 40th Ill., 100, it is held that evidence in chancery taken by deposition or reported by the master, and filed in a cause, is as much a part of the record, since the passage of the act allowing oral testimony in chancery, as prior thereto; and that bills of exceptions in chancery proceedings may be used for the

purpose of preserving the evidence, although a certificate of evidence signed by the judge is, as a matter of form preferable, because more in harmony with chancery practice.

In *Turner* v. *Rutledge*, 13 Bradwell (Ill. Appellate), 460, the court say:

"The object of a certificate of evidence is said to be to "preserve, as a matter of record, evidence taken before "the court, and which would not otherwise so appear. "Written evidence filed in a cause needs no certificate to "preserve it, as it already constitutes part of the record. "(*Ferris* v. *McClure*, 40 Ill., 99.) Since our statute "allows oral evidence to be taken before the court upon "a hearing, no reason is perceived why the same strict- "ness in regard to the manner and time of incorporating "the same into the record should not prevail in chancery "as at law. We so understand the purport of the decis- "ions of our Supreme court upon this question."

Whether this trial is held to be at law or in equity would make no difference in the point under consideration. If the cause were treated as simply an equity case, and this jury issue as a feigned issue, nevertheless the evidence must be made a part of the record by the certificate of the judge, which could not be done after the lapse of the term at which the final decree was entered.

The issue in the case at bar can hardly properly be called a feigned issue, but assuming it to have been such, the motion should, nevertheless, be sustained.

The alleged bill of exceptions, or certificate of evidence, was signed October 6, 1885, *nunc pro tunc*, as of August 13, 1885, months after the final decree of Jan-

uary 20, 1885, and after the lapse of two rule terms and one statutory or regular term.

The practice upon feigned issues is fully set forth by Mr. Justice Bradley, in *Watt v. Stark*, 101 U. S., 247.

The motion for new trial must be made in the court of chancery, "and for that purpose the party applying for "a new trial must procure notes of the proceedings and "of the evidence given at the trial for the use of the chan- "cellor. This is done either by having the proceedings "and evidence reported with the verdict, or by moving "the chancellor to send to the judge who tried the issue, "for his notes of trial; or procuring a statement of the "same in some other proper way. The chancellor then "has before him the evidence given to the jury, and the "proceedings at the trial, and may be satisfied, by an ex- "amination thereof, that the verdict ought not to be dis- "turbed. The evidence and proceedings then become a "part of the record, and go up to the court of appeal if "an appeal is taken."

It is true that in the case in hand the circuit judge sat on both sides of the court, and therefore had before him his own notes of the trial, but as is remarked in *Watt* v. *Stark*, *supra*, page 252:

"What took place on the motion for new trial in this "case, we are not informed by the record. But as the "trial was had at the bar of the court, even though no "statement of the proceeding was made up, the court had "the benefit of its own notes of the trial, and therefore "was cognizant of all that occurred. Had we the same "means of knowledge before us, we could then judge "whether the court decided properly or not. But we "have not these means."

In *Dodge v. Griswold*, 12 N. H., 273, it was held that where an issue in a suit in chancery is sent to the court below for the verdict of the jury, exceptions to the testimony submitted must be taken and certified back to the court, or such exceptions will be considered as waived.

UPHAM J. said: "In no other mode can we obtain "proper and authentic evidence of what transpired at the "trial."

In *Brockett* v. *Brockett*, 3d Howard, U. S., 691, it was held: "That though exceptions were taken to the rulings "of the Circuit court on the trial of a feigned issue out of "chancery in a case pending in that court, yet this court can- "not pass on those exceptions unless they were adjudicated "upon by the Circuit court." In that case bills of exceptions were taken upon the feigned issue, but there was nothing in the record to show that they were called to the attention of the court sitting in chancery; and it was argued that as the same judges sat in the court of law as in the court of chancery, it could not be necessary to bring before them as chancellors what they had decided in the court of law; but this court held that argument untenable. In the case at bar had the bill of exceptions been tendered on the issue at law, it could have been certified over with the verdict to the chancery side, and then the chancery court would have had before it the record upon which the law trial had been conducted. As it is, neither a bill of exceptions nor a certificate of evidence was made out and presented during the term at which the final decree was rendered. It appears affirmatively upon the face of the record that this was so. The complainants Kerr, entered their motion upon presenting what they claimed to be a certificate of evidence on the 13th day of August, 1885, and the circuit judge in signing that paper signed it

on the 6th of October, as of the 13th day of August, so that there is no pretense whatever that the bill of exceptions, or certificate of evidence, was tendered, signed or filed in apt time. Indeed, inasmuch as the certificate is signed as of the 13th of August, it seems to follow that whatever exceptions are embodied in it were not taken on the trial itself, but were only taken on the 13th day of August.

In legal terminology, "*nunc pro tunc*" means that a thing is done at one time which ought to have been performed at another. (2 Bouvier, p. 247.)

The judge in this instance did not certify *nunc pro tunc* as of the December term, but as of a day in the July term—namely, August 13th.

If the circuit judge had no power, after the lapse of the term, to sign a bill of exceptions, how could he sign a certificate of evidence, or in any other manner make the alleged evidence part of the record?

And if the rule rested on the application of the principle of laches, how can the laches of the appellants be any the less in the premises whether the appropriate form of preserving the evidence is called a bill of exceptions, a certificate of evidence, or the report of the judge? In any mode adopted, it is the judicial act of the judge, making that matter of record which, without such action, would not be such.

As remarked by Chief Justice WAITE in *Muller* v. *Ehlers*, *supra*: "A judge cannot act judicially upon the "rights of parties after the parties, in due course of pro-"ceeding, have both in law and in fact been dismissed "from the court."

II.

The issue was in effect not a feigned issue, but a suit at law.

The law in reference to this subject is well stated in *Amer. Dock &c. Co.* v. *Trustees*, 37 New Jersey Equity, 266, as follows:

"The distinction between the suspension of proceed-
"ings in an equity suit, with leave to a party to bring a
"suit at law, or directing an action and issue out of chan-
"cery, is well settled. If the cause is allowed to stand
"over with leave to bring an action, or directing an action
"at law, the action is prosecuted in compliance with the
"practice and proceedings in ordinary actions at law.
"Bills of exceptions may be taken at the trial, and the
"proceedings are reviewable by rule to show cause and
"writ of error in the usual manner, and judgment at law
"will be entered, which will be accepted in the equity
"court as a finality. *Bootle* v. *Blundell*, 19 Ves., 494,
"509; *Ex parte Kensington*, Geo. Coop., 96; *Hope* v.
"*Hope*, 10 Beav., 581, 583, 586; *Smith* v. *Earl of Effing-*
"*ham*, *id.*, 589, 595; *Apthorp* v. *Comstock*, 2 Paige, 482.
"But where an issue is sent out of chancery, the whole
"proceeding is under the control of the chancellor. No
"bill of exceptions can be taken, and no judgment en-
"tered; the circuit record and *postea* are sent to the court
"of chancery, and the conduct and result of the trial are
"subject to review in that court only. *Trenton Banking*
"*Co.* v. *Rossell*, 1 Gr. Ch., 511; S. C., *id.*, 492; *Holcombe*
"v. *Managers*, 1 Stock., 457; *Freeman* v. *Staats*, *id.*, 816;
"*Black* v. *Lamb*, 1 Beas., 108; 2 *id.*, 455; *Johnson* v.

"*Harmon*, 94 U. S., 371; *Clayton* v. *Lord Nugent*, 1 "Coll., 363; 13 L. J. (N. S.) Exch., 363.

"Whether an order is for an action at law or an issue "out of chancery, does not depend upon the form in "which the issue is framed. An issue, or, as it is com- "monly called, a feigned issue, is a mode of procedure "adopted from the civil law by courts of law as well as "courts of equity, as a means of having some question "of fact arising incidentally, and to be made the founda- "tion of some order or decree, determined by the verdict "of a jury. It is called a feigned issue for the reason "that its object is not the establishment of a legal right "on which a judgment shall regularly follow, but the "ascertainment by a formal trial of some issue of fact "arising in another cause, and material to the decision of "the latter. For convenience of trial the issue must be "given the form of a common law action, with appro- "priate pleadings, and an issue thereon; but, nevertheless, "*the nature and purpose* of the issue give it character as "a feigned issue or otherwise, and not the form in which "the issue is expressed."

The decree of October 8, 1878 required the South Park Commissioners to pay to appellants the value of the designated tracts "on the twenty-seventh day of August, A. "D. 1870, the time when possession was taken by the South "Park Commissioners," with interest thereon from that date.

The thirteenth section of article II of the constitution of the State of Illinois provided and provides: "Private "property shall not be taken or damaged for public use "without just compensation. Such compensation, when "not made by the state, shall be ascertained by a jury, as "shall be prescribed by law."

Under the decree of October 8th nothing remained to be done except the ascertainment by a jury of the compensation to be paid for the land.

A feigned issue is directed to be tried for the purpose of informing the conscience of the chancellor, and aiding him to come to a proper conclusion. If he thinks the trial has not been a fair one, or for any other reason desires a new trial, it is in his discretion to order it. But he may proceed with the cause though dissatisfied with the verdict, and make a decree contrary thereto, if in his judgment the law and the evidence so requires.

But here the merits of the cause had been determined by the final decree of October 8th, and the conscience of the chancellor needed no information. The compensation alone was to be determined, and that by a jury. The nature and purpose of the issue gave it character as a mere action at law without any of the attributes of a feigned issue.

Practically the "equity reserved" by the retention of the bill had relation to the securing title to the commissioners upon a proper distribution of the money.

Indeed the verdict would have been conclusive, but for the reservation in the decree that the amount specified in the verdict should stand as the value of the land unless set aside or changed by the court. In *Franklin* v. *Green*, 2 Allen, 522, an issue had been framed by the court for the jury to determine whether a certain note involved in a general controversy had been obtained from the plaintiff by the fraud and misrepresentation of the defendant, and the Supreme court of Massachusetts say that where an issue is directed, in view of the right of trial by jury

being secured by the constitution, then, " when a verdict " is rendered and not set aside for good cause shown, it " would be regarded as settling the facts in issue conclu- " sively." That was a suit in equity and the issue directed was a feigned issue. In the case at bar the issue was in no respect a feigned issue, but simply one for the ascertaining of just compensation under the constitution, and, like an assessment of damages under the English practice at *nisi prius*, or at the assizes, or before a sheriff. On such inquiries before a judge of a court of common law the practice is the same in reference to setting aside the finding, as upon an application for a new trial at law. The motion in this case was heard at law, and overruled, and the verdict directed to be certified over, which was done. Now, had the the complainants Kerr, made out a bill of exceptions or a certificate of evidence and procured the judge's signature so that it became part of the record, then the certificate to the verdict by the court of law would be a certificate of the whole record before that court, and the exceptions, though not expressly certified, would become part of the chancery record. (*Johnson* v. *Harmon*, 94 U. S., 378, and cases cited.) Ordinarily, applications for a new trial upon an issue sent out of chancery, must be made to a court of chancery after the proceedings are certified back from the court at law; but in the case at bar the complainants Kerr saw fit to make their motion at law, treating the issue as if it were an action at law instituted on the law side by the filing of a petition to condemn the land. It could not be contended in this case that the chancellor could render a decision contrary to the verdict if he were dissatisfied with it, or could have granted new trials until his conscience was satisfied, as

would have been the case upon the trial of a feigned issue proper. It is not necessary to contend that a writ of error would have laid to the order of the law court of January 12, 1885, overruling the motion for a new trial. It is probable, however, that it would, because that order was a final order at law. In a condemnation suit, under the Illinois statute, there is no judgment for recovery of damages, and no issuance of execution. The jury return a verdict, which is called a report, setting forth the compensation to which the owner is entitled upon the taking of his land by the petitioner, and section 10 of the statute thus provides: "The judge or court shall, upon such "report, proceed to adjudge and make such order as to "right and justice shall pertain, ordering that petitioner "enter upon such property and the use of the same upon "payment of full compensation, as ascertained as afore-"said; and such order, with evidence of such payment, "shall constitute complete justification of the taking of "such property." (Revised Statutes, Illinois, Chapter 47, Sec. 10; Title, Eminent Domain; Hurd's Statutes, 1881, page 511). In the case at bar the court of law overruled the motion for a new trial and directed the verdict to be certified to the chancery court, and that order was the final determination by the law court that no reason existed for setting aside the verdict of the jury which fixed the compensation. It is therefore not unreasonable to contend that upon a bill of exceptions duly tendered to the law court the cause might have been taken to this court upon a writ of error, as in the case of other final judgments at law. It is unnecessary, however, to determine how this is, inasmuch as when the verdict was certified over the only way that what passed before the law court could be made

a legitimate part of the record before the chancellor was by a bill of exceptions or certificate of evidence, tendered in due time and signed by the judge. So that whether considered as a bill of exceptions or a certificate of evidence, the action of the judge on the 13th day of August, 1885, was too late, and this document should be stricken from the record.

Respectfully submitted.

MELVILLE W. FULLER,
Of Counsel for Appellee.

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UNITED STATES SUPREME COURT,

OCTOBER TERM, 1885.

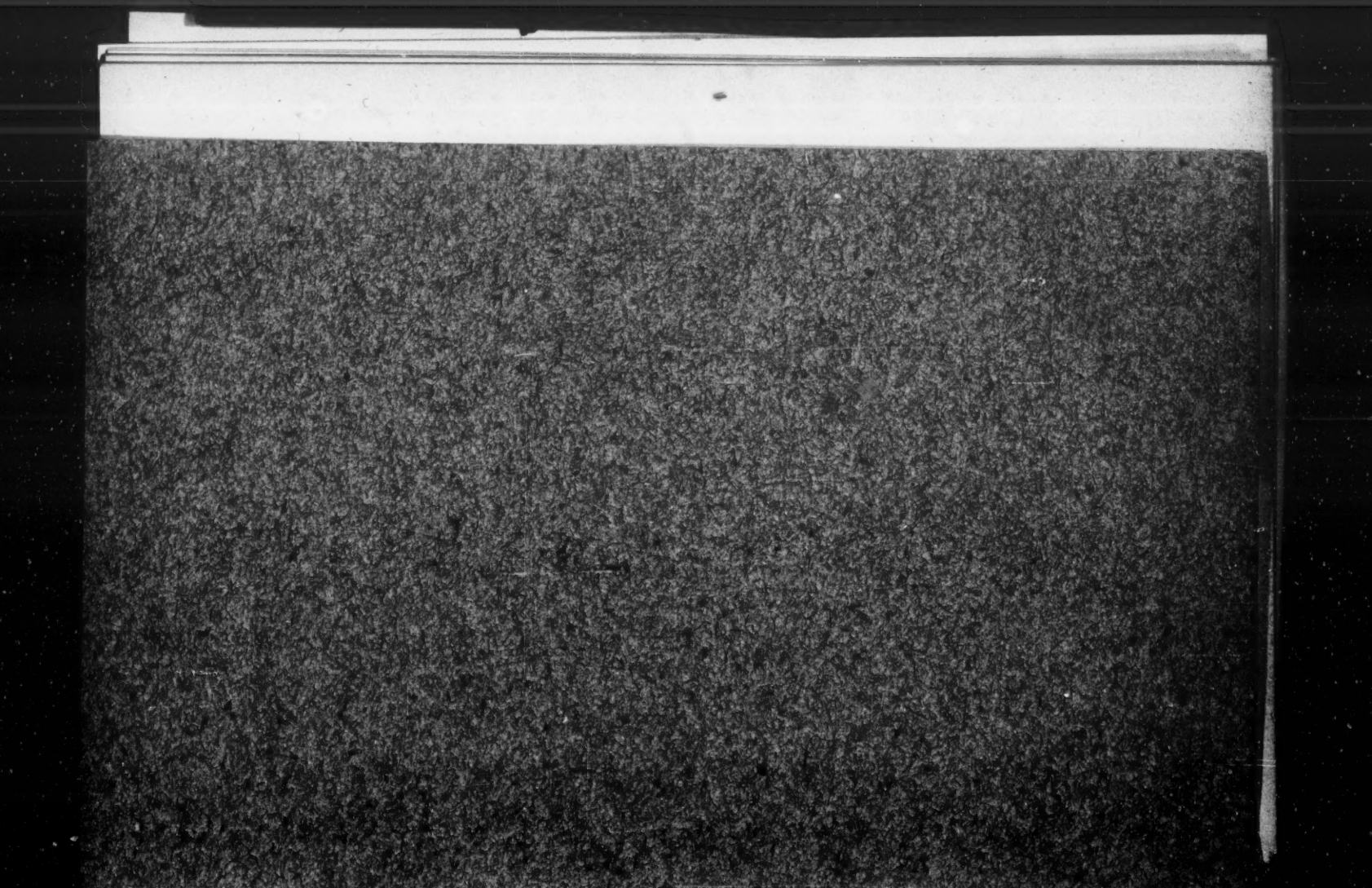
SUSIE M. KERR ET AL., EX., &c.,
vs.
THE SOUTH PARK COMMISSIONERS.

Appeal from Northern District of Illinois.

SUGGESTIONS FOR APPELLANTS,

ON MOTION OF APPELLEES TO STRIKE OUT PART OF THE RECORD.

ISHAM & LINCOLN,
SOLICITORS AND OF COUNSEL FOR APPELLANTS.



UNITED STATES SUPREME COURT,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR ET AL., EX., &C.,
vs.
THE SOUTH PARK COMMISSIONERS.

Appeal from
Northern District
of Illinois.

Suggestions for Appellants, on Motion of Appellees to strike out part of the Record.

A bill in chancery "to quiet title" was filed in the Circuit court. It was filed to assert the title of Kerr to certain lands in possession of the South Park Commissioners, which they had taken possession of and claimed to hold under a title derived by purchase from Phillips. The decree in that case found Kerr to be the owner of 111 acres of the lands in question. That decree came before this court and was affirmed. See abstract of record printed for this motion.

Afterwards, following the mandate of this court, an issue was directed out of chancery to the law side of the court, to determine by the verdict of a jury the value of these 111 acres at the time when possession was taken thereof by the South Park Commissioners.

The issue as to the value of the land was tried before a jury, and a verdict rendered, which on a motion for new trial on the *law* side of the court was set aside. This verdict, therefore, was never certified to the chancery side of the court, and never came before the chancellor for consideration, but was set aside and a new trial granted in the law court.

Without further order by the chancellor a new trial was had resulting in the present verdict; and motion for a new trial was made on the law side and overruled. It was overruled on the law side of the court by the judge presiding at the jury trial, and he having overruled the motion directed the verdict to be certified by the clerk to the chancery side of the court, to which exception was taken by Kerr. (Abstract of record printed for this motion, page 4.) The clerk certified *the verdict merely* to the chancery side of this court on the 12th day of January, 1885. His certificate appears on pages 4 and 5 of said abstract, and decree was entered on the 20th of January, 1885.

In March following an appeal was prayed by the complainants, and allowed and perfected. Subsequently, on the 13th of August, the proceedings at law on the jury trial—the evidence and the instructions of the court,—were presented in a certificate to the chancellor, who was also the judge who presided at the trial on the law side of the court, and this certificate was taken under advisement, and on October 6 signed and made a part of the chancery record.

Motion is now made to strike all this matter so certified from the record, on the ground that the certificate

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was made after the term at which the verdict was rendered, and assumes that the court had at that time no power to make the certificate, or to in any way incorporate this matter in the chancery record. The motion is rested on the rule said to govern the time of signing a bill of exceptions, which, by analogy, is said to govern the time of signing what, in the chancery practice of Illinois, is called a "certificate of evidence"; and this certificate of the judge, in the present case, is called and is likened to a "certificate of evidence," under the chancery practice of Illinois.

We submit that this motion thus founded rests upon misapprehension and false analogies, and that these apparent analogies grow out of a confusion of the state practice under special statutes with the proper practice of the federal courts. With deference, we suggest that this or a similar cause has led on other proceedings which have made here a record, technically at least, irregular.

The practice of the Federal Circuit courts is not affected by the statutes or practice of the State courts, but within the scope of the ninetieth equity rule, is regulated by that of the High Court of Chancery in England. The proceedings on an issue out of chancery to a court of law are regulated by that procedure in the absence of rules providing otherwise.

In the courts of the State of Illinois a special procedure in all equity causes grows out of the provisions of a statute that, "On the trial of every suit in chancery "oral testimony shall be taken when desired by either "party."

R. S., Ch. 51, Sec. 38, Tit. "Evidence."

The Supreme court has said: "Since the passage of "the act allowing oral testimony in chancery cases, it has "been held that the *evidence* or the facts proved by it "*ought as before to appear in the record.* The same "may be stated in the decree, in a bill of exceptions, in "a certificate of the judge, or in a master's report." *McIntosh* v. *Saunders*, 68 Ill., 129. It is accordingly the practice in the State court of Illinois, whenever oral testimony has been taken on the hearing of the cause, to incorporate that evidence in the record by a certificate which performs the office of a bill of exceptions in cases at common law.

Now, it is assumed that, after the hearing of an issue out of equity, the proceedings before the jury and their result are to be got back before the chancellor by the same methods that make up a record for appeal where oral evidence is heard on trial of an equity cause. So it is assumed that "a certificate of evidence" must be made according to the practice in the State court, where oral testimony is heard *before the chancellor.* In chancery cases such a certificate of evidence is necessary to cause a record to contain the oral testimony heard before the chancellor, and it is considered analogous to a bill of exceptions, and to be governed by the same rules. Among these is that of the time within which it may be signed by the chancellor, so as to incorporate the oral matter occurring before him into the record.

That is not this case. This is not a case where witnesses are called to testify orally on the hearing of a chancery cause. This is an issue out of chancery to try on the law side of the court a question of fact, and the results of the trial *are to be certified back to the chancellor according to the regular equity practice in such cases.*

Question here, therefore, is what should be certified back to the chancellor from the law court? And what is the mode of certifying back to the chancery court the results of the issue tried at law? When must or may this be done? By whom should it be done? What rules of procedure govern that proceeding?

We have not a question of the mode of preserving in the record oral testimony adduced before the chancellor on the final hearing of an equity cause. We have nothing to do with bills of exceptions, therefore, nor with "cer- "tificates of evidence," so called, nor with the analogies between them and the bills of exceptions. We have to do only with the rules that govern in equity procedure, and by which, when an issue has been sent out of chancery to a court of law, the results are got back before the chancellor.

It is necessary that after the trial of an issue at law, not merely the verdict, but the evidence and directions of the court to the jury, should all by some method be brought before the chancellor who ordered the issue, because he is the one who in every event must pass upon all questions involved in the application for a new trial. The application for a new trial must in every event be made to the chancellor directing the issue, and *not* to the judge presiding at the jury trial. So in the matter of appeal, where an issue is ordered, no appeal lies from the finding at law to any court, but on the return of the issue to the court of chancery a motion may be made for another issue or for a new trial, and the appeal will be from the order of the chancellor and upon the chancery record.

In this respect there is distinction between the case where an issue out of chancery is directed, and the case where an action is directed to be brought at law. Where the court of equity orders an action to be brought at law, an appeal lies from the decision at law to the law courts of appeal. It is otherwise where an issue is directed out of chancery. Such are all the authorities!

In 2 Seton on Decrees, 991 (Ch. 4, Sec, 3, No. 6), it is said:

"Application for the new trial of an issue must be made to the court of equity which granted it, where *all proceedings at law* will be examined. *Footnor* v. *Figes*, 2 Sim., 319. But for the new trial of an action, it must be made to the court of law, and the *result* of the action alone will be looked to in the court of equity. *Hope* v. *H.*, 10 Bea., 581–9; *Smith* v. *E. Effingham*, 11 Bea., 82, 86, and *a bill of exceptions for an alleged misdirection of the judge, will not lie* in the case of an issue; *Armstrong* v. *A.*, 3 M. & K., 52.

In Dan. Ch. Pr., *1136, it is said:

"The application for a new trial must be made to the court of chancery, whether the trial was had before that court or a court of common law. When the trial has been had before a court of chancery without a jury, the application may be made either to the judge before whom the trial was had, or to the court of appeal in chancery. In all other cases, the application must be first made *to the judge who directed the issue* or question of fact, or question as to the amount of damages to be tried."

In note 10 to the foregoing citation from Dan. Ch. Pr., it is said:

"Where the court of chancery directs a suit at law to be brought, the application for a new trial must be made to the court in which such action is pending. But where an issue is directed to be tried in a court of law, the application for a new trial should be made to the court which ordered the issue." *Apthorp* v. *Comstock*, 2 Paige, 482."

In *Railway Company* v. *Toomer, et al.*, 9 Rich. (S. C.) 276, it is said:

"If an action had been ordered, the appeal would have been "to the law Court of Appeals, from the trial had; otherwise, "when the order is of an issue, or an issue in the nature of an "action. In such cases the motion must be made, on the return "of the issue, in the court from which it emanated; not by way "of appeal, but for another issue or a new trial."

In the last case is given the report to the chancellor of the judge presiding at the trial, and in it he states the issue and the proceedings upon it and his directions to the jury. The procedure followed in that case would seem to be a just illustration of what is proper to be done in returning to the chancellor the proceedings upon an issue at law. The chancellor who orders the issue is the one who must review the proceedings before the jury and determinine whether or not a new trial should be granted; and it is the record in his court which must contain the material upon which all the proceedings are to be reviewed upon appeal, if appeal should be taken. It is the duty of the chancellor to see that he has before him for his consideration the proceedings on the trial of the issue. If these are not certified to him by the trial judge, or embodied in some form of a report to him, he may refer to the notes taken at the trial by the judge who presided there. Upon this subject it is said, in 2 Dan. Ch. Pr., *1136-*1137:

"Upon the application for a new trial, the judge's notes taken at the trial are the proper evidence of what was then proved; and where the application is made for a new trial of an issue directed to a court of common law, an *ex parte* application should be made to the court of chancery to send to the judge who tried the issue for his notes of the trial."

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In 1st Archibald's Practice, 646, 647 and 648, being book 1, part 3, title "Proceedings upon feigned issues," it is said:

"After the trial of an issue out of a court of equity the judge before whom it was had certifies the finding of the jury, and adds in his certificate the mention of any special circumstance he may think proper, such as, that the verdict was against evidence, or the like.

* * * * * * *

"If the party against whom the issue is found be dissatisfied with the verdict, the application for a new trial must in general be made in the court which directed the issue, *as well where the point relates to the admissibility of evidence as on other* ground. But where on the trial of an issue out of chancery leave is given by the judge to move for a new trial, the motion may, it seems, be made in the court of law. And in an *action* brought by order of the court of chancery the motion may be made either in chancery or in the court in which the action is depending. Formerly where the issue had been directed by the master of the rolls, the application might have been made to the chancellor; but now *the application must be made to the judge who directed the issue.* Such an application may be made in respect of an issue directed from the equity exchecquer *at any time during the succeeding term or the sittings after*, but it should be made in the first instance before *the lord chief baron sitting alone in equity*, if it arise out of a cause pending before him.

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"If the motion for a new trial be made in the court of equity, that court should be furnished with the report of the judge who tried the cause; and which may be obtained from him upon application to him by the court of equity for that purpose."

In 1 Green's Ch. Rep. (N. J.), *Bassett et al.*, v. *Johnson et al.*, 161, it is said:

"That the judge beyond returning the *postea*, should go farther, and furnish a fair statement of the trial to this court, is abundantly proper, and required by the practice in such cases. In fact, his certificate has always its weight. But what that report must contain, is another question. The objection stated is, that the report is not full enough; that it should state the

evidence and give a minute history of the trial. I cannot think there is any necessity for imposing this duty on the judge. Why should he state the whole evidence? That was to be settled by the jury. The very object of the issue was to confide the facts to their determination. This court would not, after taking this step, undertake to settle the facts embraced by the issue. The *judge has stated the general character of the evidence* offered, *the part objected to*, and *the decision made* upon those objections, *with his charge to the jury*. This was clearly all that could be required from him. But if any difficulty existed on this subject I should not for this cause grant a new trial, but *should call on the judge for an additional report of the case*."

In *Trenton Banking Company* v. *Rossell*, *ibid.*, 493, the chancellor says:

"The *postea* is properly returned to this court. Where *an action at law* is directed by a court of equity, the *postea* must be returned to the court in which the suit at law is instituted. The cause is there, and motions for new trial and all other proceedings are to be had in that court. But when an *issue* is directed by a court of equity, *the postea must be returned to the court which ordered the issue, and all the subsequent proceedings are in that court*."

These authorities are sufficient to illustrate what the procedure in chancery is. Upon an issue to a court of law an application for a new trial must be made to the chancellor directing the issue, and appeal, if any, must be heard upon the record in the chancery cause before him. For this reason it is proper that he should cause to be brought before him in any of the ways indicated any proceedings on the trial which might influence his action in granting or refusing a new trial; and it is proper for him, and his duty, to incorporate in his chancery record whatever may be essential to a proper review of his rulings upon appeal. There is nothing in this analogous to bills of exceptions. Nor is there any such

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limitation as is suggested and insisted upon by counsel, of the time within which the chancellor may himself act upon the question of a new trial, or incorporate in the chancery record the matter necessary to a proper review of the proceedings at law upon the issue directed.

In 2 Dan. Ch. Pr., *1119, it is said:

"After a trial has been had, the judge before whom it has been tried certifies, on the *postea*, how the verdict was found; but judgment is not entered up on the verdict. Any special circumstances which are found by the jury, or which the judge may think it right to report to the court, *should be* indorsed on the *postea;* and the court, in ordering an issue, usually directs any special circumstances found by the jury which may be material in the measuring the extent of the relief to be given on further consideration, to be indorsed on the *postea.* A bill of exceptions for an alleged misdirection of the judge upon the trial of an issue will not lie; the regular course being to apply to the court which directed the issue for a new trial. In *Armstrong* v. *Armstrong* (3 M. & K., 45–52), however, a bill of exceptions was tendered and signed by the judge, and the objection to its regularity having been waived, it was argued and decided upon in the exchequer chamber."

That no such limitation of time prevails as in cases of judgment at common law, and that no rule exists that a motion for a new trial or for the incorporation of the proceedings on hearing of the issue upon which the motion is based must be had before the expiration of a term, is perfectly apparent from the statement in 2 Dan. Ch. Pr., 1136. "The motion for a new trial may be made, although the decree has been enrolled." *Ib.*, note. *Fernie* v. *Young*, L. R. 1 H. L. Cas., 63; 12 Jur.; N. S., 437.

"Where the trial has been had before a court of common law, no positive time is fixed within which the application must be made." 2 Dan. Ch. Pr., *1136.

In *Legard* v. *Daly*, 1 Ves. Sen., 194, a motion for a

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new trial of issues sent to the law court was refused for several reasons. Among them was one which Lord Hardwicke said weighed greatly with him, namely, the length of time. But the time in that case was *five years and a half* since the trial. He made no suggestion that he was governed by any rule as to any fixed period of time. He treated the length of time as merely one consideration affecting the exercise of his discretion. The case of *Van Alst* v. *Hunter*, 5 J. C. R., shows that no rule of time exists. There a motion for a new trial was overruled, made at the second term after the trial at law, but the chancellor is at great pains to show that he is on all grounds perfectly satisfied with the verdict, and he was plainly governed by that consideration.

To the same effect is the language already quoted from Archibald's Practice, 647:

> "Such an application may be made in respect of an issue directed from the equity exchequer *at any time during the succeeding term or the sittings after*. But it should be made in the first instance before the Lord Chief Baron sitting alone in equity, if it arise out of a case pending before him."

In the present case the Act of Congress establishes two terms of court in the Northern district of Illinois in each year, one commencing on the third Monday in December and the other on the first Monday in July. By rule of court there are certain "adjourned" terms, but they are established only by rule, are not recognized by statute, and are called and considered to be adjourned terms.

The proceedings on this issue occurred at the December term. and the motion for a new trial and the appeal from the decree were made at that term. Early in the

next term following, the July term, the chancellor made the certificate which is incorporated into this record, the chancery record of the proceedings on the trial of the issue at law over which he himself actually presided.

There is no controversy over the correctness of the statement which he has certified of the proceedings on the trial of the issue. It shows the evidence offered and the directions of the court to the jury and the exceptions reserved on the trial, and shows them correctly.

The motion to strike this certificate from the record, so as to exclude from review the matter which it contains, is based solely upon the consideration that it is introduced into the record by a certificate of the chancellor, being also the trial judge, made after the expiration of the term at which the proceedings were had.

It is not ungracious for us to maintain that this is a technical objection, taken solely to prevent your Honors from deciding the real case upon the law and upon the merits, and ought not to be favored.

We respectfully submit that in this proceeding, which is one to be governed solely by the practice of this court, and which relates to the incorporation into the chancery record of the proceedings upon the trial before a jury, of an issue out of chancery, the circuit judge has done no more than it was his duty as the trial judge to do by way of information, by certificate, report or otnerwise, to the Chancellor directing the issue. He ought to have done it originally as a matter which was part of his own duty. The matter so certified or reported by the trial judge would thereby become a part of the chancery record. The Circuit Judge did no more than he ought to have

done then; no more than what it was *his* duty as a trial judge to have done before; and no more than he might have been required to do to complete the record, putting it in proper form for review in this court.

The rule is conceded that the *judgment of the court* cannot be changed after the term is ended. *Bank of U. S.* v. *Moss*, 6 H., 38. But this is not a case where the judgment of the court is altered. If a judgment has been wrongly entered, the *record* may be changed after the term, to make it show the true judgment, the actual judicial action of the court. Mistakes or errors in the record may be corrected and the record made to show the real action of the court. *People ex rel.* v. *Quick*, 92 Ill., 580. But this is not a question of altering or touching the judicial determination of the court at all. It is merely an order of the court incorporating in the chancery record for the information of this court on appeal, matter which incontestably belonged there.

It may be that the Circuit judge might, in his discretion, have refused to make the certificate, if he had considered the appellants chargeable fairly with laches in suffering the length of time to elapse. He obviously did not so consider, and the record is silent on such a subject. In the exercise of his discretion, knowing all the circumstances, he did not refuse, but on the contrary he signed the certificate. We submit that the question here is not one of power, and that this court will not review and reverse the discretion of the court below in making this certificate.

EDWARD S. ISHAM,
Of Counsel for Appellants.

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117-379-388

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1142.

SUSIE M. KERR *et al.*, APPELLANTS,

vs.

THE SOUTH PARK COMMISSIONERS.

And now comes the South Park Commissioners, by M. W. Fuller, its solicitor, and of counsel, and moves the court to strike from the record herein the so-called certificate of evidence or bill of exceptions (to be found on pp. 42 to 765 of the record) tendered to the circuit judge for signature August 13th, 1885, and signed by him October 6th, 1885, *nunc pro tunc* as of said August 13th, upon the following grounds, to wit:

1st. No power existed in the circuit court or the judge thereof on August 13th, 1885, or afterwards, to sign said certificate or bill of exceptions and make it part of said record.

2nd. That the *laches* of appellants in tendering said bill or certificate was such as to render the act of the judge in signing the same improvident and unauthorized.

The final order or judgment-at-law was entered January 12th, 1885, one of the days of "the December term, 1884, of said court," and the final decree in this cause in chancery was entered January 20th, 1885, one of the days of "the December term, 1884, of said court." The alleged bill of exceptions or certificate of evidence was not tendered or pre-

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Supreme Court of the United States.

OCTOBER TERM, 1885.

SUSIE M. KERR, Ex., &c., & AL.

vs.

THE SOUTH PARK COMMISSIONERS.

Appeal from Northern District of Illinois.

REPLY TO SUGGESTIONS FOR APPELLANTS ON MOTION TO STRIKE OUT.

The suggestions of appellants' counsel in opposition to the motion to strike out the alleged certificate of evidence or bill of exceptions entirely ignore the fact that the *final* decree in this case was entered upon the 20th of January, 1885, of the "December term, 1884," and the alleged certificate or bill was not presented until August, 13th, in the July term, 1885.

Counsel contend that the application for new trial should have been made before the chancellor, and then insist (page 10 of their suggestions and following) that such application is subject to no limitation of time as to when it shall be made or as to proceedings upon it, citing 2 Dan. Ch. Pr., 1136; *Fernie* v. *Young*, L. R., 1 H. L. Cas., 63; *Legard* v. *Daly*, 1 Ves. Sen., 194; *Van Alst* v. *Hunter*, 5 John.'s Ch., 122.

But the citations relate only to what may be done while the equity cause is still pending, and have no relation to cases which have gone to final decree.

And although on page 1136 of the Second Volume of Daniels', Fourth American Edition, it is said in a note "the motion for a new trial may be made, although the decree has been enrolled," to support which *Fernie* v. *Young*, L. R., 1 House of Lords (English and Irish Appeals, 1866), page 63, is relied on, yet the latter case only rules that "if one party enrolls a decree *before the time for a new trial expires*, the other party is not thereby prevented from moving for a new trial." The Lord Chancellor says, on page 85, "that if a motion is made for a new trial within the time allowed for that purpose, parties cannot be deprived of that right which *the statute* gives them to make such a motion, because the other parties have proceeded rapidly to get the decree enrolled."

Concede that the chancellor may entertain an application for new trial *at any time* so long as the cause is pending, he certainly cannot do so after the final decree has been entered and the term at which it was entered has expired.

In the case at bar no application for a new trial was ever made to the chancellor. The motion was presented and overruled on the law side. No bill of exceptions was tendered to the law court, nor was any application made to the court of chancery to send to the judge who tried the issue for his notes of the trial (if he had any), or a report of the evidence.

Nearly seven months after the final decree had been entered the chancellor is applied to to sign a certificate of the entire evidence adduced before the law court and the rulings of that court thereon. If appellants claimed the verdict had been against the evidence, or that the action of the jury was affected injuriously by any ruling of the judge at law, such questions could only be raised upon an application for new trial, and that application, it is conceded, was never made to the chancellor. Yet this alleged certificate is not and does not affect to be a certificate to what passed in the equity proceedings, but to what passed on the law issue, and in no view was it competent for the chancellor to sign it.

The law judge could not have signed a bill of exceptions after the term had lapsed, and it does not appear that he was asked to certify the evidence and his rulings to the chancellor. It is absurd to say that he could so certify or report *after* the final decree.

The learned circuit judge did not undertake to sign this document as of January 20th, 1885, the day of the final decree, nor as of any day prior thereto. He signed it as of August 13th—an entirely sufficient indication of opinion on his part that the certificate or bill was presented too late. By his signing as and when he did, the question presented could be argued upon this motion without putting appellants to the expense and trouble of a separate suit by mandamus.

It is not difficult to see why appellants made their motion for a new trial upon the law side. They desired the motion to be governed by the same rules as are applicable in the instance of such motions in actions at law. They did not desire the motion to be subjected to the test of the principles or rules of equity.

But in any point of view the evidence and rulings upon the law issue could not be made part of this record after the term of the final decree had elapsed, unless by order or agreement or facts equivalent thereto. As a question of power, no power existed. As a question of laches, the presumption of laches is irrebutable where the term has elapsed and there is no extension by order or consent, and this for the protection of parties. The certificate of the circuit judge, so far from indicating that he did not consider appellants chargeable with laches evidences the exact contrary, for he signs as of August 13th of the Juiy term instead as of the December term.

Appellants' counsel refer to some alleged hardship in being cut off from getting at the merits of the controversy assumed to be involved in this case.

The decree of October 8, 1878, determined the merits of the real controversy. After that nothing remained except

to ascertain the value of one hundred and eleven acres of land, and pay it over, with interest at six per cent. from August 27th, 1870.

The jury found a verdict of $155,400, which, with the interest, amounted at the time of the decree of January 20th, 1885, to about $290,000. A motion for a new trial was heard and overruled. The chancellor saw no reason to change the verdict or set it aside and the final decree followed.

And inasmuch as the appellants could not then comply with the decree on their part, the appellees were allowed to pay the money into court. This was done about the 24th of January, the amount then paid being the balance in full after deducting certain moneys already received by the appellants.

It was after this that appellants prosecuted their appeal, and months after their appeal had been perfected that they tendered the alleged certificate.

It is difficult to see what special hardship there can be in appellants finding themselves unable to discuss a mere question of fact in an appellate tribunal.

Respectfully submitted,

MELVILLE W. FULLER,
Of Counsel for Motion to Strike Out.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR ET AL., *Appellants*,
vs.
THE SOUTH PARK COMMISSIONERS, *Appellees*.
No. 1142.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR APPELLANTS.

The questions in this case arise out of a proceeding to ascertain the value of certain lands, in pursuance of a mandate of this court, shown at page 1 of the printed record. The lands concerning which inquiry is directed are certain tracts consisting of 111 acres, selected by the South Park Commissioners to be a portion of the East park. The mandate of this court contained the following provision:

"And it is further ordered that the value of said premises required to be paid be ascertained as follows: A jury shall be empaneled in this court, on the law side thereof, to hear the

evidence submitted by both parties, and said jury shall determine by their verdict the value of the land hereinbefore described, on the 27th day of August, A. D. 1870, the time when possession was taken by the South Park Commissioners, and the verdict shall be certified by the clerk to the chancery side of this court, and the amount so found shall be considered as the value of said premises on the day aforesaid, unless set aside or changed by the further order of this court." (Rec., p. 2.)

In pursuance of this mandate, the cause having been redocketed (Rec., p. 3), it appears that an issue to the law side of the court was directed, and a verdict was rendered on the 5th day of November, 1883, but that said verdict was on the 18th day of February, 1884, on the motion of the South Park Commissioners for a new trial, set aside by the judge on the law side of the court and a new trial was awarded (Rec., p. 7), so that this verdict was never certified by the clerk to the chancery side of the court, and never came before the chancellor, and was *never the subject of any motion or order on the chancery record* of the court. A new trial having been ordered at law, another jury was empaneled, which, on the 16th day of December, 1884, rendered a verdict fixing the value of said lands as of the date of the 27th of August, 1870, at $155,400. (Rec., p. 13.) Motion for a new trial being made by complainants was overruled, and the court at law directed "said verdict to be certi-"fied by the clerk, as provided in said decree," and an exception was taken by the complainants. On the same date, viz: the 12th day of January, 1885, the clerk of the court made his certificate, certifying to said verdict, and filed it, and the certificate concludes as follows: "which "said verdict is hereby certified by the clerk to the "chancery side of this court, as by said decree and order

"overruling said motion to set aside said verdict di-
"rected." (Rec., p. 14.)

Afterward, at the said term, on the twentieth day of January, the court entered its decree, which, after reciting that the cause had been heard upon the mandate of this court, and the second verdict of the jury above mentioned, and certified by the clerk to the chancery side of the court, and upon "the evidence, rulings and "charge of the court upon the trial of the issue as to "said value," proceeded as follows:

"And the South Park Commissioners, exhibiting to the court the pleadings, orders, proofs and decree of August twenty-sixth, 1882, in a certain cause on the chancery side of this court, wherein the South Park Commissioners were complainants and Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, executors, etc., of William P. Kerr, deceased, and others, were defendants, wherefrom it appears that on the twenty-ninth day of November, 1879, the sum of eighty-two thousand eight hundred dollars, and on the twenty-sixth day of February, 1880, the sum of seventy-two hundred dollars, of the moneys of the said South Park Commissioners, came to the hands of the said Kerrs, complainants in this case, and that the sum of forty-two hundred and twenty dollars and nineteen cents was paid into this court in that suit December first, 1882, as appears from the order of this court in that cause, on that day entered, all these moneys being paid on account of the lands in this cause mentioned; and it further appearing that the sum of twenty-five thousand dollars was paid into court in this cause on the eighteenth day of February, 1884, on account of said lands, it is ordered that said several sums of eighty-two thousand eight hundred dollars, with interest from November twenty-ninth, 1879; seventy-two hundred dollars, with interest from February twenty-sixth, 1880; forty-two hundred and twenty dollars and nineteen cents, as of the date of payment into court herein provided for, and twenty-five thousand dollars, with interest from February eighteenth, 1884, be applied on said principal sum of one hundred and fifty-five thousand four hundred dollars, and interest, and that the South Park Commissioners pay into court under this decree only the balance thereby arrived

at, together with the commission provided by law thereon, and the sum of two hundred and fifty dollars, the commission on the sum of twenty-five thousand dollars so paid February eighteenth, 1884, as aforesaid, and interest thereon from that date." (Rec., p. 15.)

The fourth and second sections of the law which established the South Park Commissioners, authorized and empowered them, and directed that they should select certain lands, specifically described, for use as a park (61 Ill. R., 116), and the lands in question here are among those described by the act. The mandate directed the value of said premises to be inquired of, as of the twenty-seventh day of August, 1870, the time when the possession was taken of said lands by the South Park Commissioners. The provision of the constitution of Illinois concerning the right of eminent domain, in force when the South Park Board of Commissioners was created, was in these words: "Nor shall any man's "property be taken or applied to public use without the "consent of his representatives in the general assembly, "nor without just compensation being made to him." (61 Ill. R., 120.) The constitution in force on the 27th of August, when the South Park Commissioners took possession of this land, and must be deemed to have selected it, provides as follows: "Private property shall "not be taken or damaged for public use without just "compensation."

Cons. 1870, Art. II, Sec. 13.

On the trial of the issues before the jury as to the value of the lands taken, the owners offered in evidence, as tending to show the value of the lands taken, the prices which had been actually paid on the sales of

similar property situated so as to adjoin the park, or be within a reasonable distance of it. This evidence was excluded. Instances of the offering of such evidence by the appellants, and its exclusion by the court, are found on pages 70, 77, 89, 108, 345 of the printed record.

The charge of the court to the jury upon this subject is shown on page 370, and is as follows:

" A number of witnesses testified that the agitation of the park project, the anticipation that the legislature would authorize the appropriation of lands to establish a park in the vicinity of the present South Park, and the introduction of the bill into the legislature, which finally became a law on the day of February, 1869, materially enhanced the value of lands embraced in the present park lines, as well as the lands adjacent thereto and in that vicinity. Any resulting benefits to the lands within the proposed park from this and other causes, such as the growth and prosperity, or the anticipated growth and prosperity of the city of Chicago, you should take in account in determining the amount that will fairly compensate the owner. But a number of witnesses also testified, and there seemed to be less agreement upon this point than upon some others, that the passage of the park act, its ratification by the people and the fixing of the proposed park boundaries by the legislature, gave to the lands immediately fronting upon and in the vicinity of the park, including the Midway Plaisance and the boulevards, an additional value solely on account of their being without the proposed park lines, but adjacent to the park, the plaisance and the boulevards, or near enough thereto to receive the special benefits resulting from such improvements. In the nature of things the lands within the proposed park, and which were to constitute it, could not have been then specially benefited, and the owner of the lands in question should be allowed nothing on the ground that his property was thus specially benefited. Even the witnesses who testified upon this branch of the case for the owner admitted that the outlying lands received a benefit from their location or relation to the park which the lands constituting the park did not receive.

" Sales of property of like character and quality, similarly situated and affected by the same causes, made under circumstances likely to produce competition among bidders, are some-

times resorted to in determining the value of lands; but inasmuch as the lands adjacent to and in the vicinity of the park, plaisance and boulevards received a special benefit, and were subject to a special burden by reason of the existence of the park, plaisance and boulevards, their situation and that of lands embraced within the park lines were relatively so different that outside sales afforded no just grounds for determining the character of the lands taken for the park, and hence all evidence of such sales was excluded, and you are again instructed that there is no such evidence before you."

"It is for you to say whether any of the experts in giving their opinions of the value of the two tracts in question were influenced, if at all, by knowledge of sales of lands which received a special benefit by reason of their peculiar relation to the park, plaisance, and boulevards. To the extent that any of the witnesses based their opinions upon a knowledge of such sales, their evidence should be disregarded. It is for you to say, however, whether any of the witnesses gave opinions upon this basis. (Rec., p. 370.)

"Situated as they then were what were they worth in cash or on terms equivalent to cash in the market, if a market then existed for such lands? It is to be borne in mind—it was then known—that these lands were within the park lines and designated for park purposes. What would any one needing lands for residence, business, or any other purpose, have paid for them in cash? You are not at liberty to place a value upon those lands upon the basis of what some one might have been willing to have bought them for on time at the date named for purely speculative purposes. (Rec., p. 372.)

"Now, what you are to do is simply determine, as I instructed you yesterday, the value of that land on the 27th of August, 1870. The market value was what land would have sold for in cash, or on such time and terms as would be equivalent to cash. Was there any demand; was there any market for land *situated as this was at that time?* What evidence is there before you, if any, *showing that the lands within the park lines, or the designated park lines, were changing hands after the passage of the park act?*

"In that connection, however, you will bear in mind that many of the witnesses, most of them, perhaps, testified that the final passage of the park act, and its ratification, resulted in special benefit to the lands around the park and in its vicinity, and that the lands within the park lines did not receive this special benefit. For this special benefit you will allow nothing.

"A JUROR: Do I understand the court we have any evidence of sales outside of the park?

"The COURT: You have no right, in making up your verdict, to consider what lands outside the park lines sold for?" (Rec., p. 373.)

Upon this record we submit that the first verdict of a jury taken in this cause has never been set aside under the condition provided in the mandate of this court, for that verdict *was never certified to the court of chancery.* No new trial was ordered by the chancery court which directed the issue. It was held, therefore, without authority and the verdict was a nullity. It was erroneous, therefore, for the judge at law to order a new trial while that first verdict was in force.

We further submit that as to the said sums of money mentioned in the decree entered in this cause as having been paid by said South Park Commissioners, it is error to apply them as payments, on account of the amount ascertained by the verdict recited in said decree, because, by another decree of the same court standing unreversed, and mentioned in the decree in this cause, it had been adjudged between the same parties that the said moneys constituted a payment specifically for the purchase of an undivided one quarter of the said one hundred and eleven acres.

We further submit that on trial before the jury, it was error to exclude the evidence from the jury of actual sales of land of similar topography, and of the same general character, having equal railroad facilities, adjoining, or lying in the immediate neighborhood of the land in controversy, and in instructing the jury that such sales had no tendency to show the value of the lands under consideration.

I.

It was error for the judge sitting on the law side of the court to order tde trial which resulted in the verdict set forth in the decree in this cause, because the former verdict of a jury already taken in pursuance of the mandate of this court has never been set aside, and that verdict still stands. It was error, therefore, to hold a new trial and take another verdict while the one already taken remained in force, or for that judge to order a new trial in any event.

The mandate of this court, framed in the language of the decree in chancery, which it affirmed, provides as follows:

> "The verdict shall be certified by a clerk to the chancery side of this court, and the amount so found shall be considered as the value of said premises on the day aforesaid, unless set aside or changed by the further order of this court."

Under the terms of this mandate the verdict rendered on the fifth day of November, 1883, (Rec., p. 7) is still standing. It has never been set aside or changed, because it was never certified to the chancery side of the court, and *has never come under the power of any judge authorized by the mandate to set aside or change it.* That verdict still stands, therefore, "and the amount so "found must be considered as the value of said premises "on the day aforesaid." The second verdict was taken *without any authority of law*, and is a nullity. By the terms of the mandate of this court, it was only by the judge sitting in the court of chancery, out of which this issue was directed to the court of law, that the verdict could be reviewed and set aside.

Such also is the rule of law, independently of the mandate. It is well settled, and from ancient times, that after the trial of an issue at law, the verdict, with the evidence and directions of the trial judge to the jury, must be sent before the chancellor who ordered the issue, beeause it is he who must pass upon all questions relating to a new trial. A verdict once rendered must be vacated in the court of chancery or not at all, for any appeal concerning it will lie from the order of the chancellor, and upon the chancery record.

In 2 Seton on Decrees, 991 (Ch. 4, Sec. 3, No. 6), it is said:

"Application for the new trial of an issue must be made to the court of equity which granted it, where *all proceedings at law* will be examined."

Footnor v. *Figes*, 2 Sim., 319.
Daniel Ch. Pr., *1136.
Apthorp v. *Comstock*, 2 Paige, 482.
Railway Co. v. *Toomer*, 9 Rich. (S. C.), 276.
Bassett et al. v. *Johnson et al.*, 1 Green Ch., (N. J.), 161.
Trenton Banking Co. v. *Rossell, ib.*, 493.

Both by the terms of the mandate, therefore, and by the general rule of law, the verdict which was first taken under the issue directed to the law side of the court must stand until vacated or changed by the chancellor, after having been certified to the court of chancery. It was error, therefore, to hold another trial at law and to adopt a different verdict while the first verdict remains uncertified to the chancery court, and not set aside or vacated.

II.

Moneys amounting to about $82,800 had been received by the Kerrs from the South Park Commissioners, arising from transactions between them concerning an undivided quarter of this tract of 111 acres. By a decree of the Circuit court, which is the decree shown in No. 124 of the present calendar, at page 54 of the printed record in that cause, these moneys were held to be a lien specifically upon that undivided quarter of the 111 acres. That lien was foreclosed by a strict foreclosure and in consideration of that sum, unless it should be repaid by the Kerrs within ninety days, it was decreed that they should convey the said undivided quarter to the South Park Commissioners. By this decree the said sum of money is treated as the ascertained purchase price of an undivided quarter of this 111 acres. The provisions of that decree, entered in the cause which now is No. 124 as aforesaid, were before the court below in the present cause and are recited in the decree in this cause. We submit that the terms of the former decree, while it remains unreversed, were the law of this case between these parties as to that transaction, and it was error in the court below, in disregard of that decree, to direct an issue to ascertain the value of the entire tract of 111 acres, and apply the said sum of $82,800 simply as a payment on account of the amount of the verdict. By the former decree it was made the specific purchase price of that part of the land. If that decree is affirmed, it will close the relations of the parties to that land. While unreversed it is the law of the case

between the parties. But the present decree charges the appellants *with interest* on all that sum from the time it was paid, and applies the whole as a *payment on account* of the verdict shown in the decree.

As the decree stood which at that time governed the rights of the parties, an undivided quarter of 111 acres had been sold for that specific sum of $82,000, and it only remained to inquire into the value of an undivided three-fourths of 111 acres.

III.

The court below excluded from the jury all evidence relating to sales of contiguous and neighboring lands, unless they lay within the limits defining the lands which by the Park Act the commissioners were empowered to select and take. It was held, and the court below considered that it was conforming its ruling to a decision of the Supreme court of Illinois, that lands lying outside of the defined limits were so differently situated from those within that their market values did not even tend to show the value of the land within the limits. The reason given is that the lands outside the limits, which could not be taken for the park, received a special increase of value by the creation of the park which the lands within could not participate in, and, on the other hand, had to bear a burden of taxation for the creation of the park from which the lands within were exempt. These lands, therefore, were thought to be so dissimilar in their situation that the market value of those without the limits would not even tend to show the value of those within. It is not

questioned that if the sales of such lands do tend to show the value of lands within the limits, then evidence of such sales was proper to be submitted to the jury. We submit respectfully that the ruling upon this subject was wrong, and for several reasons, and that it is not necessarily involved in the decision of the Supreme court of Illinois, to which the court makes reference. The language of the court below, in its directions to the jury during the trial and in its final instructions, is shown on the preceding pages.

The ruling rests upon the assumption that all the lands within the defined limits are necessarily taken for park uses, but that they are not so taken is one of the points expressly decided by the Supreme court of Illinois in the case of *Cook* v. *The South Park Commissioners*, 61 Ill. 119. There the court said:

"The commissioners were authorized to 'select.' The term implies choice. To choose signifies to take one thing rather than another. When we select we choose. It is true, that other lands than those designated could not be taken, because it would have been an excess of the power, yet the commissioners might have refused to select. The law conferred an authority to be exercised, but not to be exercised at all hazards, and without regard to results.

"If the owners had insisted upon a most exorbitant price, and the probabilities were against a fair price by condemnation, the commissioners should be permitted to decline the purchase.

"*If the owners had insisted upon a most exorbitant price, and the probabilities were against a fair price by condemnation, the commissioners should be permitted to decline the purchase.* The legislature certainly never intended to force the selection without regard to consequences."

The lands in question therefore were not necessarily taken for park uses; it was optional with the commissioners whether they would take them or not. If they did not

take them they would be affected and increased in value like other lands by the establishment of the park, and would be charged with the special burdens of assessment. Is it not true that the value of the lands to their owner, if the commissioners should not select them, would be the measure of his loss to be compensated by the commissioners if they should take them? Is it not true that whatever would tend to show their value to the proprietor, if he should retain them, would equally tend to show the value of which he had been deprived by their being taken?

We are at a loss to apprehend just what is meant by the statement that the liability to the lands outside the park limits to a special burden of taxation and assessment so differentiates them from other lands that their value forms no basis of judgment as to the value of other lands. As to the enhancement of value caused by the establishment of the park, we insist that these lands are entitled to be accorded a participation in that. What then is the market value of lands outside the park except that residuum which remains after all allowances have been made for the special burdens which are imposed upon these lands? The market value is what those lands are worth in the hands of one who is to hold them and carry those burdens. The allowances made by the entire community in settling upon a value, can be made by witnesses expert in these values. To hold that the value thus ascertained is so peculiar that it has no tendency to show the value of lands within the park limits if they should not be, or if they should be taken, seems to be reasoning in a circle.

If these lands of ours had not been situated precisely as they were, and so as to be available for a park, then the additional value could not have been given to the other land.

Boom Co. v. *Patterson*, 98 U. S., 403.

This capacity to give value to the surrounding property, by reason of being qualified for special use, *i. e.*, as a park, was an element in their value to the owner, to the public and to the owners of the neighboring land.

If the situation were such that no right of eminent domain *enabled* the taking of them *in invitum*, and the public need of them for park uses was such as is indicated by the Park Acts and by the arbitrary power given to take them, then they would have to be bought by agreement, and their very qualification, by situation or otherwise, for the public use, and their capacity to be made serviceable to the public, and their power to give value to the adjoining property, would certainly be recognized in their price; and the public or adjoining owners would have to accord a greater value to lands lying in this position, because of their power to be thus serviceable. They were valuable for this reason to the neighbors and the public. The market prices of neighboring property tend to show what this value is. What better measure of this value can there be than the enhancement of value in other property *produced by the appropriation* of this. Iphigeneia is worth to the Greeks the value of the advantage that any Greek can expect from her sacrifice.

It is not correct to regard this property as farming land merely. Mere ordinary farm lands have not that element of value which lies in being available for park purposes to a great city, and in the power of enhancing, by being

appropriated to such a particular use, the value of all neighboring property.

It is true that until the Park Acts were passed, these lands had not so great a value. But the same was true of the neighboring land. If the passage of the Park Act gave new value to contiguous land, it did it by the recognition of the power of this property to produce that value.

There is some fallacy in the statement that the *passage of that act* did produce that value. The passage of that act was but the *occurrence then* of what was sure to occur presently. The growth of the city and a dominant public sentiment compelled the establishment in that region of a public park. These produced the act itself, and so these produced the value. The park was sure to be placed somewhere in that vicinity. It could not be told, however, what land would be selected. This land, *by its situation*, had, or seems to have had adaptation for public use which the other lands had not, and which gave it a distinctive value. This particular value the public have no right to confiscate, or take without compensation. It is a value ordinary farm land has not. A bare sand tract may have a value here far beyond that of the richest soil in a farm. A bare precipice of rock, if it is picturesque, is valuable beyond any measure of fertility.

If any land is taken *in invitum* every element of value which it has, from whatever source derived, must be recognized to the same extent that *it could make itself recognized if no power to take the land existed except by agreement.*

If the legislature had established a park of 1,000 acres in the town of Hyde Park, *without defining the bounds*, and left the land to be purchased as it

could be got by *agreement and consent of owners*, would not the Park Act have increased the value of all lands most available, that is to say, best adapted to that use? Would not the land desired *to be taken for the park* command as good price as that to be left? If so that value must be allowed now. For if defining the boundaries cuts off the price of the land within the limits, then that diminution of price is the effect of the act, and is a part of the process of taking *in invitum* by force of law, and must be compensated for. Whatever *less* of market value is accorded these lands by reason of their being withdrawn by the Park Act itself from free competition with other lands, is the effect of the act; is part of the process of appropriation; and is entitled to be allowed for.

These lands have by special recognition of the Park Act, in its defining them by boundaries what the outside lands have not—a special adaptation to serve the public need and pleasure; and have as experience proves a special power to enhance the value of contiguous property in private or public hands. It may be doubted, therefore, whether the prices of contiguous property are *an adequate* measure of the *true* value of these lands specially selected to be taken *in invitum* from the proprietors. What would be their value if they could not be taken by force? The law of eminent domain gives the power to take forcibly what the public needs, but not for a compensation less than the *value would be* if the power did not exist.

A jury has a right to consider, of course, what market there was for these lands for residence, etc., among private parties exclusive of the public, in case they should not be taken by the commissioners, but they are

not confined to that. In appraising the value a jury may look to the market as it would be if composed of such private persons, and *also* of the public wanting these lands for a park. We are entitled to the value under all that competition, for if by the effect of the park act private parties are excluded from being a part of the market for that property, that is a direct damage caused by the appropriating effect of the act, and is part of the appropriation of the land, and for that there must be compensation. The state *intending to take* our land, cannot first destroy its *value*, as related and compared with neighboring lands, *by destroying* its market, and then take the land for nothing, as being *unsalable* for want of a market, and so worthless. The whole proceeding of the state must be taken together. *Making our land unsalable by cutting it out of the market* is part of the taking. We are entitled to the value as increased by what the state would have to pay if buying the park lands by agreement when all lands were in free competion, where men might sell and withdraw or hold for the benefit of whatever the public might do—having the *right* to do either.

If the Supreme court of Illinois (61 Ill., p. 124) says the situation of the lands outside of the park was peculiar and special, it is plain that whatever was peculiar and special in their situation, differing them from the lands to be taken, was the effect of the special provision of the Park Act. But if the value of the lands within was less than it would be if the owner had a right or the power to hold on to it, that dimunition is a damage coming from the exercise of the power of the government to take that land by force. It is that, also, which has made the situation of the lands within peculiar and special. They are *entitled* to

the value they derive from the "prospect of establishing "a public park." But that must be taken to be their value *on the footing of other lands, and as being not more liable to be taken than they*. The value of adjacent lands *tends to show this*, and if sales are to be in evidence at all these sales should be admitted. If they are to be accounted less valuable because of their peculiar situation in being cut out and fixed to be taken into the park, then the difference between this value and that of the adjacent lands *is the effect* of the Park Act; and producing that effect is part of the process of taking, and should be correspondingly compensated for. The only way to ascertain this difference, which is the damage to be paid for, is by ascertaining the value of the adjacent lots and lands.

It seems not to be clear that the Supreme court of Illinois has held what is assumed in the charge of the court below. Nor is it very clear what the Supreme court did hold. Exception was taken to the refusal of instructions, but it does not appear exactly what the instructions were. They are not shown. It seems clear that certain sales of lands outside the park were admitted in evidence, but certain instructions as to the bearing of that evidence were refused. The language of the opinion is, to say the least, very meagre. It may fairly be claimed that the court did not hold that all sales of outside lands were to be excluded, or that such sales have no tendency to show the value of the inside lands. This case, *Cook* v. *South Park Commissioners*, 61 Ill., 124, is the only case upon the subject, as we understand.

EDWARD S. ISHAM,
Of Counsel for Appellants.

117-3194 388

SUPREME COURT U. S.
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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR ET AL.,
Appellants,
vs.
THE SOUTH PARK COMMISSIONERS,
Appellees.
No. 1142.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLEES.

MELVILLE W. FULLER,
OF COUNSEL.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.

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BRIEF AND ARGUMENT FOR APPELLEES.

MAY IT PLEASE YOUR HONORS:

I submit in this case that the decree should be affirmed, for the following reasons:

First. That the alleged certificate or bill of exceptions forms no legitimate part of this record, and that the motion to strike it out should be sustained or said certificate disregarded.

Second. That the decree of the chancellor cannot be questioned, for error, if any, committed on the trial of the issue on the law side of the court, because no motion for a new trial was made before the chancellor.

Third. No error was committed in the proceedings on the law side.

Fourth. That if any error was committed on the law side, the decree of the chancellor, in disregard thereof, should not be reversed for that reason.

Fifth. As to so much of the decree as related to the payment of the money into court:

1. If any error was committed, it could be corrected by a modification of the decree, or reversal in part.

2. But no error was committed.

FIRST. THAT THE ALLEGED CERTIFICATE OR BILL OF EXCEPTIONS FORMS NO LEGITIMATE PART OF THIS RECORD, AND THAT THE MOTION TO STRIKE IT OUT SHOULD BE SUSTAINED, OR SAID ALLEGED CERTIFICATE DISREGARDED.

The facts necessary to be considered under this point are as follows:

Upon the 8th day of October, A. D. 1878, a final decree was entered in this cause, and upon the 12th of December, 1881, that decree was affirmed by this court. The mandate issued May 13, 1882, and contains this decree and will be found on page 1 of the printed record. The decree can also be found on page 259 of the printed record on the first appeal, which is part of the record of this case.

The decree of October 8, 1878, settled the rights of the parties, and determined that the South Park Commissioners should pay to the complainants, Kerr, the value of certain real estate in said decree described, and as un-

der the constitution of the state the compensation to be made for lands taken in the exercise of the power of eminent domain must be ascertained by jury, the court directed, by said decree, a jury to be empaneled upon the law side of the court to determine that value, the decree providing also that such verdict should be certified back to the chancery side of the court. A jury was accordingly empaneled on the 2d day of December, 1884, at the "adjourned October term, 1884," of said court (P. Rec., 9), and a trial being had, returned a verdict on the 16th day of said month of December. (P. Rec., 13.) The complainants Kerr thereupon moved for a new trial on the law side of the court, which motion came on on the 10th day of January, 1885, which was one of the days of the "December term, 1884," of the court, and was overruled on the 14th day of January, 1884 (P. Rec., 13), and the clerk directed to certify the verdict to the chancery side, which he did, and the verdict, as so certified, was filed accordingly on that day. (P. Rec., 14.) Upon the 20th day of January, 1885, which was of the "*December* term, 1884," of said court, a decree was entered in the cause, adjudging the value of the land to be the amount named in the verdict. (P. Rec., 15.) Upon the 14th day of March, of the "adjourned March term, "1885," of said court, an appeal was perfected by the complainants Kerr to this court. (P. Rec., 17.)

On the 13th day of August, 1885, of "the *July* term, "1885," of said court complainants Kerr presented to the chancellor what they claimed was a certificate of the evidence given upon the trial before the jury, and asked the court to sign and seal the same, to which the South Park Commissioners objected.

The motion is entitled "In Chancery" (P. Rec., 18),

and its language (P. Rec., 18) is, that the complainants "present to the court an alleged copy of the testimony "taken before the jury heretofore empaneled in this cause, "and move that the same be certified by the court and "made a certificate of evidence and a part of the record "in this cause."

On the 6th day of October said certificate was signed and sealed *nunc pro tunc*, as of said 13th day of August.

The court on said 6th day of October entered an order in said cause, "in chancery," as follows (P. Rec., 18): "This matter coming on upon the motion of complainants "Kerr, herein entered, August thirteenth, 1885, and the "court being now sufficiently advised in the premises, "sustains said motion, and signs the copy of evidence pre-"sented on that day *nunc pro tunc* as of said August "thirteenth, 1885." And the alleged certificate of evidence was signed as follows (P. Rec., 377): "Signed "and sealed this sixth (6th) day of October, A. D. 1885, "*nunc pro tunc* as of August 13th, A. D. 1885."

The terms of the United States Circuit court within and for the Northern district of Illinois, as fixed by statute, are the third Monday of December and the first Monday of July in each year (United States Revised Statutes, 1875, page 120, Chapter 8, Title 13, Sec. 658), and that court also has and has had for many years, under its eighteenth rule, adjourned terms on the first Mondays of March, May and October, "at which any judicial business "may be transacted the same as at any regular term." (Baker's Rules U. States and State Courts, Illinois (1878) 103; Blatchford's Rules, etc., of U. S. Courts, 904). The application to the court to sign this certificate of evidence, or bill of exceptions, was made seven months after the

motion for a new trial had been overruled, and after the lapse of the March and May adjourned, or rule terms, and the December stautory regular term.

There was no report of the judge of what passed upon the trial at law, no notes of trial signed or certified to by the judge, no certificate of evidence, no bill of exceptions, prior to or other than the paper signed October 6, as of August 13, and no order of court and no consent of parties extended the time for presenting such certificate or bill.

I.

Treating this cause as simply an equity case, and this jury issue as a feigned issue, nevertheless the evidence must be made a part of the record in some form by the certificate of the judge, which could not be done after the lapse of the term at which the final decree was entered.

The alleged bill of exceptions, or certificate of evidence, was signed October 6, 1885, *nunc pro tunc*, as of August 13, 1885, months after the final decree of January 20, 1885, and after the lapse of two rule terms and one statutory or regular term.

The practice upon feigned issues is fully set forth by Mr. Justice Bradley in *Watt* v. *Stark*, 101 U. S., 247.

The motion for new trial must be made in the court of chancery, "and for that purpose the party applying for "a new trial must procure notes of the proceedings and "of the evidence given at the trial for the use of the chan- "cellor. This is done either by having the proceedings "and evidence reported with the verdict, or by moving "the chancellor to send to the judge who tried the issue

"for his notes of the trial, or procuring a statement of the "same in some other proper way. The chancellor then "has before him the evidence given to the jury, and the "proceedings at the trial, and may be satisfied, by an ex- "amination thereof, that the verdict ought not to be dis- "turbed. The evidence and proceedings then become a "part of the record, and go up to the court of appeal if "an appeal is taken."

It is true that in the case at bar the circuit judge sat on both sides of the court, and, therefore, had before him his own notes of the trial, and hence in the decree which was entered January 20, 1885, it is recited not only that the cause came on to be heard on the pleadings, orders and decree of October 8, 1878; and the mandate of the Supreme court and the verdict of the jury, rendered upon the law side of the court and certified by the clerk to the chancery side, but also the evidence and rulings and charge of the court upon the trial of the issue as to said value, but such evidence, rulings and charge were nowhere in the record at that time. The remarks in *Watt* v. *Stark*, are exactly applicable:

(P. 250.) "The complainant, on his motion for a new "trial, might have had the evidence, or the substance of it, "stated and made part of the record, and then we could "have seen whether the court below had before it suffi- "cient grounds for being satisfied with the conclusions "of the jury." * * *

(P. 252.) "What took place on the motion for new "trial in this case we are not informed by the record. But "as the trial was had at the bar of the court, even though "no statement of the proceeding was made up, the court "had the benefit of its own notes at the trial, and therefore "was cognizant of all that occurred. Had we the same

"means of knowledge before us, we could then judge "whether the court decided properly or not. But we "have not these means."

In *Dodge* v. *Griswold*, 12 N. H., 273, it was held that where an issue in a suit in chancery is sent to the court below for the verdict of a jury, exceptions to the testimony submitted must be taken and certified back to the court, or such exceptions will be considered as waived.

UPHAM, J., said: "In no other mode can we obtain "proper and authentic evidence of what transpired at the "trial."

In *Brockett* v. *Brockett*, 3d Howard U. S., 691, it was held: "That though exceptions were taken to the rulings "of the Circuit court on the trial of a feigned issue out of "chancery in a case pending in that court, yet this court can- "not pass on those exceptions unless they were adjudicated "upon by the Circuit court." In that case bills of exceptions were taken upon the feigned issue, but there was nothing in the record to show that they were called to the attention of the court sitting in chancery; and it was argued that as the same judges sat in the court of law as in the court of chancery, it could not be necessary to bring before them as chancellors what they had decided in the court of law; but this court held that argument untenable, and said: "It is contended that as the same judges "sat in the court of law as in the court of chancery, that "it could not be necessary to bring before them as chan- "cellors what they had decided in a court of law. Had "the court of law been held by different persons from "those who sat as chancellors, it is admitted that it would "have been necessary to bring before the latter the points "ruled in the trial of the issue. But is not the principle "the same in both cases? The capacities in which the

"same tribunal acts on such occasions, are as distinct as "if the same duties had been performed by different "tribunals."

How then could the chancellor, on the 13th of August, or 6th of October, certify to what passed in December before the law judge?

In the case at bar had a bill of exceptions been tendered on the issue at law, it could have been certified over with the verdict to the chancery side, and then the chancery court would have had before it the record upon which the law trial had been conducted. As it is, neither a bill of exceptions nor a certificate of evidence was made out and presented during the term at which the final decree was rendered, nor was any report of the evidence made by the law judge, nor his notes of trial called for or furnished. It appears affirmatively upon the face of the record that this was so. The complainants Kerr entered their motion upon presenting what they claimed to be a certificate of evidence on the 13th day of August, 1885, and the circuit judge in signing that paper signed it on the 6th of October, as of the 13th day of August, so that there is no pretense whatever that the bill of exceptions, or certificate of evidence, was tendered, signed or filed in apt time. Indeed, inasmuch as the certificate is signed as of the 13th of August, it seems to follow that whatever exceptions are embodied in it were not taken on the trial itself, but were only taken on the 13th day of August.

In legal terminology, "*nunc pro tunc*" means that a thing is done at one time which ought to have been performed at another. (2 Bouvier, 247.)

The judge in this instance did not certify *nunc pro tunc*

as of the December term, but as of a day in the July term—namely, August 13th.

The general rule is that a bill of exceptions, statement of facts, or certificate of evidence cannot, in the absence of consent, be presented to and signed by the court and made part of the record of a cause after the adjournment of the term at which the final judgment or decree was entered, unless the time for so doing has been extended.

Chief Justice MARSHALL said, in *ex parte Bradstreet*, 4th Peters, 107, that: "If a party intends to take a bill of "exceptions, he should give notice to the judge at the "trial, and if he does not file it at the trial he should move "the judge to assign a reasonable time in which he may "file it. A practice to sign it after the term must be "understood to be a matter of consent between the par-"ties, unless the judge has made an express order in the "term allowing such a period to prepare it." And this court in *Muller et al.* v. *Ehlers*, 91 U. S. (1st Otto), 249, holds that a bill of exceptions cannot be signed after the adjournment of the court for the term at which the judgment was rendered unless an extension of time was given for that purpose; and through Mr. Chief Justice WAITE, says: "Upon the adjournment for the term the "parties were out of court, and the litigation there was "at an end. The plaintiff was discharged from further "attendance, and all proceedings thereafter in his absence "and without his consent were *coram non judice*. The "order of the court, therefore, made at the next term "directing that the bill of exceptions be filed in the cause "as of the date of the trial was a nullity." So in *Flanders* v. *Tweed*, 9 Wallace, 425, and in effect in *Generes* v. *Bonnemer*, 7 Wall., 566, it was ruled that the trial judge

could not make a statement of facts after the lapse of the term.

There is no power to sign a bill of exceptions after the expiration of the term, unless the time is extended, or there is consent, or there are circumstances equivalent to consent or order.

In Illinois the bill of exceptions usually contains all the evidence, and the term has, therefore, grown to mean something different from the common law signification, but the rule as to when it must be signed has never varied. It is the settled practice that a bill of exceptions must be reduced to writing, and signed and filed during the term at which the final judgment and decree is entered, except in cases where the counsel consent, or the judge by an entry on the record, directs, that it may be prepared in vacation, and signed *nunc pro tunc;* and that in all cases it must appear on its face to have been taken and signed at the trial.

Evans v. *Fisher*, 5 Gilman, 456.
W., St. L. & P. R. Co. v. *The People, &c.*, 106 Ill., 653.
Burst v. *Wayne*, 13 Ill., 667.
Magill v. *Brown*, 98 Ill., 235.

In *Goodrich* v. *Cook*, 81 Ill., 41, the court in effect approved of the authorities holding that a court cannot make an order in a case after it has been finally decided and passed beyond its control, but that time may be given to prepare a bill of exceptions or certificate of evidence, and as it did not appear when the certificate of evidence in that case was signed, held that the presumption was that it was presented and signed at the right time, or the judge would not have signed it; while in *Magill* v. *Brown*,

98 Ill., 325, as it affirmatively appeared that the bill of exceptions was neither presented to nor signed by the judge, until after the expiration of the period fixed for filing the same, it was properly stricken out.

Upon the principle that the act of the court ought not to be allowed to prejudice a party, it has been held that where a certificate of evidence (*People* v. *Williams*, 91 Ill., 87), or bill of exceptions (*Magill* v. *Brown*, 98 Ill., 235), has been duly made out and presented to the judge in apt time, his neglect or refusal to sign it should not deprive the party of his rights. The non-action of the judge, when the certificate or bill is duly presented, is equivalent to an extension of time.

The 38th section of chapter 51, of the revised statutes of Illinois (Hurd's Rev. Stat. of 1881, page 526), which has been in force since 1849, is as follows: "On the trial "of every suit in chancery oral testimony shall be taken "when desired by either party."

Under this section certificates of the evidence are signed by the judge and filed, in order to make such evidence part of the record, which it would not otherwise be.

In that particular it is impossible to see any difference between such certificate and a bill of exceptions when the latter is used to set forth the entire evidence upon a trial. In *Smith* v. *Newland*, 40 Ill., 100, it is held that evidence in chancery taken by deposition or reported by the master, and filed in a cause, is as much a part of the record, since the passage of the act allowing oral testimony in chancery, as prior thereto; and that bills of exceptions in chancery proceedings may be used for the purpose of preserving the evidence, although a certificate of evidence signed by the judge is, is a matter of form,

preferable, because more in harmony with chancery practice.

In *Turner* v. *Rutledge*, 13 Bradwell (Ill. Appellate), 460, the court say:

"The object of a certificate of evidence is said to be to "preserve, as a matter of record, evidence taken before "the court, and which would not otherwise so appear. "Written evidence filed in a cause needs no certificate to "preserve it, as it already constitutes part of the record. "(*Ferris* v. *McClure*, 40 Ill., 99.) Since our statute "allows oral evidence to be taken before the court upon "a hearing, no reason is perceived why the same strict- "ness in regard to the manner and time of incorporating "the same into the record should not prevail in chancery "as at law. We so understand the purport of the decis- "ions of our Supreme court upon this question."

If the circuit judge had no power, after the lapse of the term, to sign a bill of exceptions, or statement of facts, how could he sign a certificate of evidence or a report, or in any other manner make the alleged evidence part of the record?

And if the rule rested on the application of the principle of laches, how can the laches of the appellants be any the less in the premises whether the appropriate form of preserving the evidence is called a bill of exceptions, a certificate of evidence, or the report of the judge? In any mode adopted, it is the judicial act of the judge, making that matter of record which, without such action, would not be such.

As remarked by Chief Justice WAITE in *Muller* v. *Ehlers*, *supra*: "A judge cannot act judicially upon the "rights of parties after the parties, in due course of pro-

"ceeding, have both in law and in fact been dismissed "from the court."

The settled practice in Illinois in such cases is to move to strike out certificates or bills of exception when improvidently signed.

W., St. L. & P. R. Co. v. *The People*, 106 Ill., 654.
Warner v. *Kelly*, 5 Bradwell (Ill. App.), 559.
Magill v. *Brown*, 98 Ill., 235.
Brust v. *Wayne*, 13 Ill., 664.

Such a motion I have accordingly heretofore made and submitted to the court, which reserved its decision to the present hearing.

Upon the argument had upon that motion, my brother Isham, who is in no way responsible for the laches of his present client in this case, not having been of counsel until recently, made the point that a motion for a new trial of a feigned issue could be made before the chancellor at any time. But the difficulty he encountered in that suggestion was that a motion for a new trial was never made at all before the chancellor in this case, and of course such motion could not be made *after final decree*, and the lapse of the term at which such final decree was entered.

Counsel's citations upon this motion were: 2 Dan. Ch. Pr., 1136; *Fernie* v. *Young*, L. R., 1 H. L. Cas., 63; *Legard* v. *Daly*, 1 Ves. Sen., 193; *Van Alst* v. *Hunter*, 5 John.'s Ch., 122.

But the citations relate only to what may be done while

the equity cause is *still pending*, and have no relation to cases which have gone to *final decree*.

And although on page 1136 of the Second Volume of Daniels' Fourth American Edition, it is said in a note, "the motion for a new trial may be made, although the "decree has been enrolled," to support which *Fernie* v. *Young*, L. R., 1 House of Lords (English and Irish Appeals, 1866), page 63, is relied on, yet the latter case only rules that "if one party enrolls a decree *before the* "*time for a new trial expires*, the other party is not there- "by prevented from moving for a new trial." The Lord Chancellor says, on page 85, "that if a motion is made "for a new trial *within the time allowed for that purpose*, "parties cannot be deprived of that right which *the stat-* "*ute* gives them to make such a motion, because the other "parties have proceeded rapidly to get the decree "enrolled."

Concede that the chancellor may entertain an application for new trial *at any time* so long as the cause *is pending*, he certainly cannot do so after the *final decree* has been entered and the term at which it was entered has expired.

In the case at bar no application for a new trial was ever made to the chancellor. The motion was presented and overruled on the law side. No bill of exceptions was tendered to the law court, nor was any application made to the court of chancery to send to the judge who tried the issue for his notes of the trial (if he had any), or a report of the evidence.

Nearly seven months after the final decree had been entered the chancellor is applied to sign a certificate of the entire evidence adduced before the law court and the

rulings of that court thereon. If appellants claimed the verdict had been against the evidence, or that the action of the jury was affected injuriously by any ruling of the judge at law, such questions could only be raised upon an application for new trial, and that application, it is conceded, was never made to the chancellor. Yet this alleged certificate is not and does not affect to be a certificate to what passed in the equity proceedings, but to what passed on the law issue, and in no view was it competent for *the chancellor* to sign it.

The law judge could not have signed a bill of exceptions after the term had lapsed, and it does not appear that he was asked to certify the evidence and his rulings to the chancellor. It is absurd to say that he could so certify or report *after* the final decree.

The learned circuit judge did not undertake to sign this document as of January 20, 1885, the day of the final decree, nor as of any day prior thereto. He signed it as of August 13th, an entirely sufficient indication of opinion on his part that the certificate or bill was presented too late. By his signing as and when he did, the question presented could be argued upon this motion without putting appellants to the expense and trouble of a separate suit by mandamus.

It is not difficult to see why appellants made their motion for a new trial upon the law side. They desired the motion to be governed by the same rules as are applicable in the instance of such motions in actions at law. They did not desire the motion to be subjected to the test of the principles or rules of equity.

But in any point of view the evidence and rulings upon the law issue could not be made part of this record after

the term of the final decree had elapsed, unless by order or agreement or facts equivalent thereto. As a question of power, no power existed. As a question of laches, the presumption of laches is irrebuttable where the term has elapsed, and there is no extension by order or consent, and this for the protection of parties. The certificate of the circuit judge, so far from indicating that he did not consider appellants chargeable with laches, evidences the exact contrary, for he signs as of August 13th of the July term instead as of the December term.

Appellants' counsel referred to some alleged hardship in being cut off from getting at the merits of the controversy assumed to be involved in this case.

The decree of October 8, 1878, determined the merits of the real controversy. After that nothing remained except to ascertain the value of one hundred and eleven acres of land, and pay it over, with interest at six per cent. from August 27, 1870.

The jury found a verdict of $155,400, which, with the interest, amounted at the time of the decree of January 20, 1885, to about $200,000. A motion for a new trial was heard and overruled. The chancellor saw no reason to change the verdict or set it aside, and the final decree followed.

And inasmuch as the appellants could not then comply with the decree on their part, the appellees were allowed to pay the money into court. This was done on the 23d of January, the amount then paid being the balance in full after deducting certain moneys already received by the appellants.

It was after this that appellants prosecuted their appeal,

and months after their appeal had been perfected that they tendered the alleged certificate.

It is difficult to see what special hardship there can be in appellants finding themselves unable to discuss a mere question of fact in an appellate tribunal.

II.

So far as the bill of exceptions or certificate of evidence, or other mode of making the evidence adduced upon the trial of this issue a part of the record, is concerned, the result is the same, if we consider the issue as in effect not a feigned issue but a suit at law. But if this be the view taken, then if appellants desired to question anything that passed before the law judge, they should have prosecuted a writ of error to the final order on that side of the court, overruling the motion for new trial, or directing the verdict to be certified over.

The law in reference to this subject is well stated in *Amer. Dock &c. Co.* v. *Trustees*, 37 New Jersey Equity, 266, as follows:

"The distinction between the suspension of proceed-
"ings in an equity suit, with leave to a party to bring a
"suit at law, or directing an action and issue out of chan-
"cery, is well settled. If the cause is allowed to stand
"over with leave to bring an action, or directing an action
"at law, the action is prosecuted in compliance with the
"practice and proceedings in ordinary actions at law.
"Bills of exceptions may be taken at the trial, and the
"proceedings are reviewable by rule to show cause and
"writ of error in the usual manner, and judgment at law

"will be entered, which will be accepted in the equity "court as a finality. *Bottle* v. *Blundell*, 19 Ves., 494, "509; *Ex parte Kensington*, Geo. Coop., 96; *Hope* v. "*Hope*, 10 Beav., 581, 583, 586; *Smith* v. *Earl of Effing-* "*ham*, *id.*, 589, 595; *Apthorp* v. *Comstock*, 2 Paige, 482. "But where an issue is sent out of chancery, the whole "proceeding is under the control of the chancellor. No "bill of exceptions can be taken, and no judgment "entered; the circuit record and *postea* are sent to the "court of chancery, and the conduct and result of the "trial are subject to review in that court only. *Trenton* "*Banking Co.* v. *Rossell*, 1 Gr. Ch., 511; S. C., *id.*, 492; "*Holcombe* v. *Managers*, 1 Stock., 457; *Freeman* v. "*Staats*, *id.*, 816; *Black* v. *Lamb*, 1 Beas., 108; 2 *id.*, 455; "*Johnson* v. *Harmon*, 94 U. S., 371; *Clayton* v. *Lord* "*Nugent*, 1 Coll., 363; 13 L. J. (N. S.) Exch., 363.

"Whether an order is for an action at law or an issue "out of chancery, does not depend upon the form in "which the issue is framed. An issue, or, as it is com- "monly called, a feigned issue, is a mode of procedure "adopted from the civil law by courts of law as well as "courts of equity, as a means of having some question "of fact arising incidentally, and to be made the founda- "tion of some order or decree, determined by the verdict "of a jury. It is called a feigned issue for the reason "that its object is not the establishment of a legal right "on which a judgment shall regularly follow, but the "ascertainment by a formal trial of some issue of fact "arising in another cause, and material to the decision of "the latter. For convenience of trial the issue must be "given the form of a common law action, with appro- "priate pleadings, and an issue thereon; but, neverthe- "less, *the nature and purpose* of the issue give it character

"as a feigned issue or otherwise, and not the form in " which the issue is expressed."

The decree of October 8, 1878, required the South Park Commissioners to pay to appellants the value of the designated tracts "on the twenty-seventh day of August, " A. D. 1870, the time when possession was taken by the "South Park Commissioners," with interest thereon from that date.

The thirteenth section of article II of the constitution of the State of Illinois provided and provides: "Private "property shall not be taken or damaged for public use " without just compensation. Such compensation, when "not made by the state, shall be ascertained by a jury, as " shall be prescribed by law."

Under the decree of October 8th nothing remained to be done except the ascertainment by a jury of the compensation to be paid for the land, and this was directed to be had and reported back to the Chancery court.

A feigned issue is directed to be tried for the purpose of informing the conscience of the chancellor, and aiding him to come to a proper conclusion. If he thinks the trial has not been a fair one, or for any other reason desires a new trial, it is in his discretion to order it. But he may proceed with the cause though dissatisfied with the verdict, and make a decree contrary thereto, if in his judgment the law and the evidence so requires.

But here the merits of the cause had been determined by the final decree of October 8th, the compensation alone was to be determined and practically the "equity reserved" by the retention of the bill had relation to the securing title to the commissioners upon a proper distribution of the money.

Indeed the verdict would have been conclusive, but for the reservation in the decree that the amount specified in the verdict should stand as the value of the land unless set aside or changed by the court. In *Franklin* v. *Green*, 2 Allen, 522, an issue had been framed by the court for the jury to determine whether a certain note involved in a general controversy had been obtained from the plaintiff by the fraud and misrepresentation of the defendant, and the Supreme court of Massachusetts say that where an issue is directed, in view of the right of trial by jury being secured by the constitution, then, "when a verdict "is rendered and not set aside for good cause shown, it "would be regarded as settling the facts in issue conclu- "sively." That was a suit in equity, and the issue directed was a feigned issue. In the case at bar the issue was simply one for the ascertaining of just compensation under the constitution, and, like an assessment of damages under the English practice at *nisi prius*, or at the assizes, or before a sheriff. On such inquiries before a judge of a court of common law the practice is the same in reference to setting aside the finding, as upon an application for a new trial at law. The motion in this case was heard at law, and overruled, and the verdict directed to be certified over, which was done. Now, had the complainants Kerr made out a bill of exceptions containing the evidence, or a certificate of evidence, and procured the judge's signature so that it became part of the record, then the certificate to the verdict by the court of law would be a certificate of the whole record before that court, and the exceptions, though not expressly certified, would become part of the chancery record.

Johnson v. *Harmon*, 94 U. S., 378.
Watt v. *Stark*, 101 U. S., p. 255.

2 Dan. Ch. Pr., (4th Am. Ed.), 1,120.
Watkins v. *Carlton*, 10 Leigh, 560.

The rule is that applications for a new trial upon an issue sent out of chancery, must be made to a court of chancery after the proceedings are certified back from the court at law; but in the case at bar the complainants Kerr saw fit to make their motion at law, treating the issue as if it were an action at law instituted on the law side by the filing of a petition to condemn the land.

And from the Kerrs' standpoint a writ of error would have laid to the order of the law court of January 12, 1885, overruling the motion for a new trial, because that order was a final order at law. In a condemnation suit, under the Illinois statute, there is no judgment for recovery of damages, and no issuance of execution. The jury return a verdict, which is called a report, setting forth the compensation to which the owner is entitled upon the taking of his land by the petitioner, and section 10 of the statute thus provides: "The judge or court shall, upon such "report, proceed to adjudge and make such order as to "right and justice shall pertain, ordering that petitioner "enter upon such property and the use of the same upon "payment of full compensation, as ascertained as afore-"said; and such order, with evidence of such payment, "shall constitute complete justification of the taking of "such property." (Revised Statutes, Illinois, Chapter 47, Sec. 10; Title Eminent Domain; Hurd's Statutes, 1881, page 511). In the case at bar the court of law overruled the motion for a new trial and directed the verdict to be certified to the chancery court, and that order was the final determination by the law court that no reason existed for setting aside the verdict of the jury

which fixed the compensation. It is therefore not unreasonable to contend that upon a bill of exceptions duly tendered to the law court the cause might have been taken to this court upon a writ of error, as in the case of other final judgments at law. It is unnecessary, however, to determine how this is, inasmuch as when the verdict was certified over the only way that what passed before the law court could be made a legitimate part of the record before the chancellor was by a bill of exceptions or certificate of evidence, tendered in due time and signed by the judge, or a report of the evidence signed by him. Whatever is done, must be officially done, and in apt time. So that whether considered as a bill of exceptions or a certificate of evidence, or a report of the evidence, the action of the judge on the 13th day of August, 1885, was too late, and this document should be stricken from the record or entirely disregarded.

SECOND. THAT THE DECREE OF THE CHANCELLOR CANNOT BE QUESTIONED FOR ERROR, IF ANY, COMMITTED ON THE TRIAL OF THE ISSUE ON THE LAW SIDE OF THE COURT, BECAUSE NO MOTION FOR A NEW TRIAL WAS MADE BEFORE THE CHANCELLOR.

The motion in this case was made on the law side of the court (Printed Record, 13), and the order overruling it of January 12, 1885, was on that side of the court, and directed the verdict "to be certified by the clerk as provided in said decree." Accordingly the clerk (Printed Rec., 14) did so certify the verdict "to the chancery side of this "court, as by said decree and the order overruling said "motion to set aside said verdict directed."

The motion for a new trial appears in the alleged bill

of exceptions, or certificate of evidence, as " filed January 8, 1885 " (P. Rec., 377), and is entitled, and properly so, because that was the fact, " *on the law side* for the purpose " of ascertaining the value of property." (Printed Rec., 374.)

Nothing is better settled than that a motion to set aside a verdict rendered upon an issue which a court of chancery directs to be tried at law, can be made only to the court of chancery.

Watt v. *Starke*, 101 U. S., 247.
Johnson v *Harmon*, 94 U. S., 371.

Where the objection is the rejection of proper, and the admission of improper evidence, the giving of improper and the refusing of proper instructions, or that the evidence does not sustain the verdict, a motion for a new trial must be made.

O., O. & F. R. V. R. R. Co. v. *McMath*, 91 Ill., 104.
James v. *Dexter*, 113 Ill., 654.

Inasmuch as no motion for a new trial was made before the chancellor, no objection can be taken on either of the above mentioned grounds, and it is only on those grounds that error is assigned so far as the trial is concerned.

But my learned opponent insists that a previous verdict rendered November 5, 1883, and set aside, was not properly set aside. Why not? The order of February 18, 1884 (P. Rec., 7), setting aside that verdict was manifestly an order in chancery, for it was coupled with the condition that the South Park Commissioners should pay $25,000 into court, *which was done on that day as the*

order shows. That condition the law judge could not impose, nor could the money be paid in on the law side of the court.

Whether the verdict was certified over, or not, does not appear, but that it was before the chancellor and he set it aside is clear, and that is sufficient.

Subsequently and on the 27th day of May, 1884, the cause was brought on in chancery before Hon. John M. Harlan (P. Rec., 8) on a motion on behalf of the South Park Commissioners to have the issues to be submitted to the jury settled, and upon the 11th day of June, 1884, it was ordered by the court *in chancery* (P. Rec., 9), that the motion of the South Park Commissioners be, "and the "same is hereby overruled, and this cause, upon motion "of the *complainants* (the Kerrs), is set down for the trial "of the issue stated in the decree of October 8, 1878, "on the third Tuesday of October next."

Here *the chancellor* set the cause down for the trial of the issue in October, 1884, upon the application of the Kerrs themselves. How can they now say a prior verdict was "still standing"? The setting it aside was assented to.

Williams v. *Bishop*, 15 Ill., 553.

The issue was a feigned issue, and as trials of feigned issues are to inform the conscience of the court, the chancellor may order them until he is satisfied, and may disregard the verdict and "make a decree contrary thereto, if in his judgment the law and the evidence so requires."

Johnson v. *Harmon*, 94 U. S., 372.

THIRD. NO ERROR WAS COMMITTED IN THE PROCEEDINGS ON THE LAW SIDE.

The error assigned by counsel under point III. of his brief (page 11), questions the ruling of the circuit judge in reference to sales of lands fronting on the parks and boulevards.

Counsel assigns no error in the charge of the judge, as indeed he could not, as no exception was taken at the time to the original charge delivered December 15, 1884 (P. Rec., 369), or to the additional observations on December 16 (P. Rec., 372), except that Mr. Swett said at the conclusion of the latter (P. Rec., 374): "I desire the "court to note an exception."

On the 8th day of January (P. Rec., 377), twenty-three days after the return of the verdict and the consequent discharge of the jury, the complainants filed a motion for new trial which assigns various parts of the charge to have been incorrect, but this was too late to allege exceptions to the charge or any part of it.

Railway Co. v. *Twombly*, 100 U. S., 78.

And the general remark of Mr. Swett was entirely insufficient if any one of the court's propositions was correct.

Lincoln v. *Claflin*, 7 Wall, 132.

But reference to the charge is entirely appropriate in order that the views of the learned judge may be fully understood.

The original Park Act was approved February 24, 1869 (Private Laws, 1869, Vol. 1, page 358), and was

adopted by the people, as therein provided, on the 23d day of March, 1869. The evidence disclosed that the agitation of the subject of the creation of a park increased the speculative value of land in Hyde Park, in which the tract in controversy and the parks were located.

The lines of the park were defined in the act, embracing two parks connected by boulevards or drive-ways, and by what was termed the Midway plaisance, and on the 5th of May, 1869, the commissioners formally selected the lands defined in the park act. (Printed Rec., 139.)

Under section 4 of the park act (Private Laws 1869, Vol. 1, page 359, which were put in evidence, but not copied in this alleged certificate), the commissioners were authorized within ninety days, or as soon as practicable, to "select the following described lands," describing them, and the Illinois Supreme court in *Cook* v. *Commissioners*, 61 Ill., 119, argued that the use of the word "select" implied choice, and that the commission was not bound to take all the lands described, but whether this was so or not, the formal act of selecting all of them as described in the acts, was in fact performed on May 5, 1869. (P. Rec., 139.)

Evidence was offered and received of sales of property fronting on or immediately contiguous to the parks, plaisance and boulevards, which property was shown by the evidence, to have received a very large increase in saleble value, by reason of its contiguity to the proposed improvements. The witnesses also testified to *the general increase of value* by reason of the establishment of the park, and that evidence was allowed to go to the jury.

It is complained that the court excluded evidence *of sales*

of lands adjacent to the parks, boulevards, and plaisance which had taken place at or about the time of the passage of the Park act and its adoption by the people. This ruling of the court was that where it appeared from the evidence that the particular property, sales of which were offered in evidence, fronted on or was immediately adjacent to the parks, plaisance and boulevards, and was enhanced in value by that fact, evidence of such sales was not admissible under the decision of the Supreme court of Illinois in *Cook* v. *South Park Commissioners*, 61 Ill., 124. The ruling will be found on pages 70 and 71 of the printed record, and the court says he will exclude the testimony of witnesses "as to prices which property sold for "just outside the park, leaving in however their opinion as "to the value of the park property. What I mean is "this, you cannot, when it is established that the property "just outside sold for just so much to the acre, for in-"stance, say that therefore this property was worth the "same amount. You cannot institute a comparison of "that kind; to that extent it is excluded."

At the same time the court did not exclude evidence of the general advance by reason of the park, and expressly ruled that appellants were entitled to such advance.

For instance defendants propounded to one of their witnesses (P. Rec., 213), the following question:

"What in your opinion was the fair cash value of the "Stony Island front by acre lots of the West 80 acres of "land in controversy, on the 27th day of August, 1870, "without taking into consideration the effect produced "upon the lands in that vicinity by the location of the "park, outside of the boundaries of the park?" To which the circuit judge sustained an ob-

jection upon the ground that that would deprive complainants of all benefit of the establishment of the park.

And throughout the case the witnesses were allowed to estimate the value, taking into consideration the increase by reason of the park.

And while no exception was taken at the time to the charge of the judge on the 15th day of December, and the additional instructions given on the 16th day of December, yet I will quote the language of the judge upon this point, in order to give the court the entire view he took upon the subject. He says (Printed Rec., 369):

"You are to say now, from all the evidence before you, what those lands were worth fourteen years ago. The owner is entitled to their full cash value at that time; that is to say, to what he could have realized for them in cash, not at a forced sale, but at a sale made to any one able to buy them for cash or on time and terms equivalent to cash.

"A number of witnesses testified that the agitation of the park project, the anticipation that the legislature would authorize the appropriation of lands to establish a park in the vicinity of the present South Park, and the introduction of the bill into the legislature, which finally became a law on the —— day of February, 1869, materially enhanced the value of lands embraced in the present park lines, as well as the lands adjacent thereto and in that vicinity. *Any resulting benefit to the lands within the proposed pdrk from tkis* and other causes, such as the growth and prosperity, or the anticipated growth and prosperity of the city of Chicago, you should take into account in determining the amount that will fairly compensate the owner. But a number of witnesses also testified, and there seemed to be less disagreement upon this point than upon some others, that the passage of the park act, its ratification by the people, and the fixing of the proposed park boundaries by the legislature gave to the lands immediately fronting the park and in the vicinity of the park, including the Midway Plaisance and the

boulevards, an additional value solely on account of their being without the proposed park lines, but adjacent to the park, the plaisance, and the boulevards, or near enough thereto to receive the special benefits resulting from such improvements.

"In the nature of things the lands within the proposed park, and which were to constitute it, could not have been thus specially benefited, and the owner of the lands in question should be allowed nothing on the ground that his property was thus specially benefited. Even the witnesses who testified upon this branch of the case for the owner admitted that the outlying lands received a benefit from their location or relation to the park which the lands constituting the park did not receive.

"Sales of property of like character and quality, similarly situated and affected by the same causes, made under circumstances likely to produce competition among bidders, are sometimes resorted to in determining the value of lands. But inasmuch as the lands adjacent to and in the vicinity of the park, plaisance, and boulevards received a special benefit, and were subject to a special burden by reason of the existence of the park, plaisance, and boulevards, their situation and that of lands embraced within the park lines were relatively so different that outside sales afforded no just grounds for determining the character of the lands taken for the park, and hence all evidence of such sales was excluded, and you are again instructed that there is no such evidence before you."

And on December 16th the judge stated in an explanation to the jury as follows (Printed record, page 373):

"You were told yesterday that in estimating the value of these lands the owners were entitled to any benefit or appreciation that they received in consequence of the agitation of the park project, and the expectation that some park would be established in that vicinity. If you believe the lands in that neighborhood were all benefited in this particular, these lands in common with others, they should receive the benefit of that appreciation. In order to determine what that appreciation was, you have a right to say from the evidence what these lands were worth independently of and uninfluenced by this cause. Take

the value of the lands before there was any agitation of the park project, and before this expectation existed, and add to that, if you can, the increased value. In that connection, however, you will bear in mind that many of the witnesses, most of them, perhaps, testified that the final passage of the park act, and its ratification, resulted in special benefit to the lands around the park and its vicinity, and that the lands within the park lines did not receive the special benefit. For this special benefit you will allow nothing."

In some states sales of property similar to that proposed to be condemned are not admitted in evidence, for the reason that the jury cannot determine what motives of interest or favor may have dictated the prices obtained. *East Pa. R. R.* v. *Hiester*, 4 Wright, Pa., 53; *Penn. R. R.* v. *Bunnell*, 81 Pa., 414; *Pittsburgh R. R.* v. *Rose*, 74 Pa., 362; *Central Pacific R. R.* v. *Pierson*, 35 Cal., 247; *Stillson* v. *C. & St. P. R. R. Co.*, 27 Minn., 284.

In other states evidence of actual sales of neighboring property is held admissible. *C, & W. I. R. R. Co.* v. *Murooney*, 95 Ill., 179; *Shattuck* v. *Stoneham R. R.*, 6 Allen, 115; *Edmunds* v. *Boston*, 108 Mass., 535; *Concord R. R.* v. *Greeley*, 23 N. H., 237, but the determination of what sales shall be admitted is largely in the discretion of the court. (GRAY, C. J., *Chandler* v. *Jamaica Pond Aqueduct*, 122 Mass., 306.)

But the objection to the admission of the evidence in question was that the sales which were excluded as evidence of value were not sales of property *similarly* situated to that in question.

In *Cook* v. *South Park Commissioners*, 61 Ill., 124, the court say:

"The court did not err in refusing to give the 8th, 9th and 10th instructions for appellant. The 8th and 9th are

substantially that, if lands adjacent to the park generally increased in value in consequence of the prospect of establishing a public park, then the lands of appellant must share in such increase. This does not fairly or necessarily follow. The adjacent lands to the property from their peculiar situation derived a special benefit, and were subject to a special burden. *The lands needed for the park must be purchased and the park maintained by special assessments upon the adjacent lands. Their situation relatively was so different that they were not a proper standard by which to judge the value of the lands taken for the park.*"

The ruling complained of was not made until it had appeared that the adjacent lands had been increased in value by reason of their peculiar situation in fronting on the parks, boulevards, plaisance and driveways, and were subject to a special burden by reason thereof.

The court therefore ruled properly, basing its decision upon the case just cited, that the situation of those lands relatively was so different that sales of them were not a proper standard by which to judge the value of the lands taken for the park.

The lands taken were to compose a park, and the adjacent lots and parcels would necessarily be made more attractive and valuable in consequence of their proximity to such an improvement. But the purpose for which these lands were condemned, or the effect of their condemnation for such purpose upon other lands, could not change the rule of damages. If the object of the appropriation had been different, and such as necessarily to depreciate the value of contiguous property, as if, for instance, the premises in question had been set aside for an *abbattoir*, or, for quarantine grounds, and a subsequent diminution of value had been so caused to adjacent lands, that would not deprive the owner of the right to receive the marketable

value of his property at the time the appropriation was made.

If the law were otherwise than as ruled by Judge Gresham, it would be impossible to have any park at all, for, if that which is taken to create a park is to be valued upon the basis of lands fronting on the park after the park is created, then it is apparent that that would be giving to the lands taken the very value derived by other lands because the lands were taken, a contradiction in terms.

As the Supreme court of Massachusetts say (*Dorgan* v. *Boston*, *post.*), there is no reason for including in a valuation an element which the property never acquires while belonging to the owner.

And so in *Green* v. *City of Chicago*, 97 Ill., 372, it was held: "Where land is taken for a public improve-"ment, as in this case, the compensation which both the "statute and the constitution require to be made to the "owner, is the value of the land taken, *without regard to* "*any supposable benefits or damage that may result to ad-*"*jacent property by reason of the proposed improvement* "*for which such property is taken*, and the compensation "in no case should be less than the land would sell for in "a fair, open market, where it has a marketable value. "The value or amount of compensation in every such "case is a question of fact to be determined by the jury "from an actual survey of the premises when that is prac-"ticable, their own knowledge of values, and the opin-"ions of witnesses who profess to be familiar with the "subject of inquiry, and whose business in life has afforded "them opportunities of acquiring information and of "judging accurately upon the question."

In the case at bar the jury were allowed to visit the

property in question, upon a motion by complainants that they should be allowed to do so. (P. Rec., 362.)

In *Dorgan* v. *City of Boston*, 12 Allen, 223, the court ruled that the value of land which is taken by widening of a street is not to be estimated as of the land on a street as wide as the proposed street. BIGELOW, C. J., says (p. 231), referring to the provisions regulating the assessment of damages for the property taken to widen the street, that it should be estimated at its value before the widening:

"It is obvious that this provision necessarily implies that the owner is entitled to damages for his land at its actual cash value before it was enhanced by the proposed appropriation of it to a public use. In other words, he is to be compensated for the land taken by estimating it at the value which it would have had if he had continued to hold it in the same condition and relative situation in which it would remain if the contemplated improvement should not be carried into effect. We are unable to perceive that this rule of damages will work any injustice to the land owner. It provides for compensation to him for the value of the property as possessed and enjoyed by him at the time when the statute was enacted which appropriated it to the public use. *Nor can we see any good reasons for including in a valuation an element not incident or appertaining to the property itself in the hanks of the owner, but which it acquires only by the act which takes it from him and appropriates it to the public.* Strictly speaking, the land taken is intrinsically worth to the owner only so much as its valuation would be as part of the entire tract or lot, irrespective of its proposed severance for the public use. It is difficult to understand how land is increased to the owner by a public improvement *which can be effected only by depriving him of its use.* Certainly there is no principle of equity on which a party can rest a claim for the loss of a benefit or profit which from the very nature of the case he never could have received or enjoyed."

The learned judge who tried this case at law repeatedly admonished the jury that the appellants were entitled to recover the full value of their land on the 27th day of August, 1870, and that they were entitled to consider the general increase in values produced by the prospect of a park, but he ruled that evidence of sales of property fronting upon the parks, boulevards and plaisance, was inadmissible, because lands so situated were not similarly situated to those within the park lines themselves.

The appellants' witnesses were allowed to give estimates based upon the existence of the park, and many of the appellees' experts distinctly included the appreciation by the park in their estimates. *Farwell*, (P. Rec., 255); *Philpot* (P. Rec., 261); *Rozet* (P. Rec., 319, 320); *Clark* (P. Rec., 309).

Appellants' counsel argues (page 16) that if the prospect of a park whose lines were undefined increased the value of all the lands where the park was to be located, that value should be allowed. That value was allowed. But he says further, that therefore, if the definition of the park lines cuts off the price of land within the limits, that diminution is *the effect* of the act and therefore should be compensated for. But this does not follow. The lands in question were not *diminished* in value by the definition of the lines, but lands fronting on those lines were *increased* in value. As the Supreme court of Massachusetts say: Why should the valuation include an element not incident or pertaining to the property itself in the hands of the owner? And after all, the question here is simply whether the circuit judge erred in following the rule laid down by the Supreme court of Illinois in 1871, and which had become a rule of property.

The fourth section of the original South Park act provided that "the said commissioners by this act are authorized and empowered to, and *they shall*, within ninety days after their organization as aforesaid, or as soon thereafter as practicable, select the following-described lands, situated in the towns of South Chicago, Hyde Park, and Salle, in Cook county, Illinois, to wit: (Here follows the description of the lands, including those in question. The "South Chicago" spoken of is a part of the city of Chicago.)

The South Park commissioners organized May 5, 1869, and on that day made the selection of *all* the lands above described, in accordance with the requirements of the act. (P. Rec., 139.)

The valuation of lands taken for public use under the power of eminent domain has been referred to different points of time in different States. In Illinois the compensation is fixed as of the date of the filing the petition to condemn.

South P. Com'rs *v.* Dunlevy, 91 Illinois, 49.

Hence, in the case at bar, the decree of October 8 directed the valuation to be arrived at as of August 27, 1870, as if a petition to condemn had been filed on that day.

The lands taken for the parks, boulevards, &c., were to be paid for by an assessment for benefits levied upon the adjacent lands, and a lien thereon until paid. An assessment for this purpose, in 1869–'70, was destroyed in the great fire of 1871, and a new assessment made, dated June 27, 1872 (P. Rec., 136), and the money collected in annual installments. If the lands taken were held entitled to the "benefits" which the adjacent lands received and paid for there could never be an assessment, because the moment it was made the lands taken would immediately, according to counsel, be worth just as much more as the assessment was, and the public would be remanded to the point of beginning.

The assessment covered the amount estimated to be necessary to purchase all the lands, and the commissioners could at no time have abandoned their acquisition. After they had formally selected them, May 5, 1869, and made the assessment to pay therefor in 1869–'70, there remained no *locus penitentiæ*. The lands adjacent to the park lines were enhanced in price by reason of that proximity, even beyond the amount estimated as necessary to pay for the lands taken, but that enhancement was not due, as ingeniously suggested by appellants' counsel, to any "capacity to give value to the surrounding property" *inherent* in the lands taken, but solely to the existence of the park and its improvements as such.

The evidence showed that the entire 194 acres was not worth $20,000 prior to the agitation of the park project, but in view of that project the jury and the decree allow $155,400 for only 111 acres of it as of August 27, 1870, the increase being wholly attributable to the establishment of the park.

The evidence also shows that the park and boulevards embraced 1,200 acres. This was acquired by purchase and condemnation as fast as practicable, and to say that as each piece was acquired the remainder could claim that it fronted on a park is wholly unreasonable and absurd, and would have defeated the entire improvement as a whole, and it is only as a whole that it can be considered, although each piece having a separate ownership had necessarily to be acquired separately.

Counsel cites *Boom Co.* v. *Patterson*, 98 U. S., 403, to the point that the adaptability of certain property to certain purposes should be considered in estimating its value. Undoubtedly, but there was no evidence in this case, that this particular land had any special adaptability to park purposes any more than thousands of acres in the vicinity. A good deal of it was under water, but it could hardly be said that that gave it value *to the owner* for the formation of an artificial lake. It is the value to the owner, and not to the public, which measures the compensation.

The fallacy of counsel's argument is that he assumes the owner is to receive, not what this property is worth to himself, but to the public after its devotion to a public improvement

Let me add that the paragraph with which counsel's point III commences: "The court below excluded from "the jury all evidence relating to sales of contiguous and "neighboring lands, unless they lay within the limits de- "fining the land which by the park act the commissioners "were empowered to select and take," is entirely erroneous. It was only *sales* of adjacent property that were excluded, and as to purchases of property within the limits, appellants themselves made proof of such a purchase, and expressly withdrew all objection, and declared their willingness that defendants should make proof of such purchases on their behalf. (P. Rec., 328, 329.)

FOURTH: BUT IF ANY ERROR WAS COMMITTED IN THE PROCEEDINGS ON THE LAW SIDE, THE DECREE OF THE CHANCELLOR IN DISREGARD THEREOF SHOULD NOT BE REVERSED FOR THAT REASON.

The court of chancery directs issues to be tried at law to inform the conscience of the court as to facts doubtful before, and therefore expects in return such a verdict and such a case as shall satisfy the conscience of the court to found a decree upon. But if the conscience of the court is satisfied, the chancellor may even enter a decree contrary to the verdict, or set aside verdicts until he is satisfied with the one returned.

The court will not direct a new trial because evidence was improperly rejected, if it is satisfied that the verdict is right upon considering all the evidence, including that which was rejected. 2 Danl. Ch. Pr. (4th Amer. Ed.), 1,124, referring to *Warden & Minor Canons of St. Paul* v. *Morris*, 9 Ves., 151, 167. *Barker* v. *Ray*, 2 Russ., 63, 75. *Pemberton* v. *Pemberton*, 11 Ves., 50, 52. *Mulock* v. *Mulock*, 1 Edw. Ch., 14. *Apthorp* v. *Comstock*, 2 Paige, 482. *Black* v. *Lamb*, 1 Beasley, 113, 114.

The object of an issue at law is to inform the conscience of the court, and if the court can be satisfied that substantial justice has been done the verdict will not be disturbed on mere technical grounds. *Black* v. *Lamb*, 1 Beasley (N. J.), 114. *Black* v. *Shreve*, 2 Beasley (N. J.), 455. *Lansing* v. *Russell*, 13 Barb., 510. *Thommasson* v. *Kennedy*, 3 Rich. Eq., 440.

Nor will the chancellor grant a new trial on the ground of an improper summing up by the judge, if he is satis-

fied that upon the evidence as it stands, the jury could not, if the case had been properly summed up, have given a different verdict. *Tatham* v. *Wright*, 2 R. & M., 31. *Slaney* v. *Wade*, 7 Sim., 610. *Barker* v. *Ray*, 2 Russ., 75. A new trial will only be granted if the chancellor is satisfied that injustice has been done by a misdirection of the judge.

Black v. *Jones*, 6 Exchequer, 213.

And generally when the application for new trial rests solely on the ground that the verdict was against the evidence, if the trial judge certifies that he is not dissatisfied with the verdict, a new trial will not be directed. (2 Danl. Ch. Pr. 1,121.)

There was no exclusion of competent evidence, there was no admission of incompetent evidence, and there was no misdirection of the judge, but if there had been all or either of these, the decree should not be reversed, as substantial justice was done, and the conclusion of the chancellor was fully sustained by the evidence.

The particular complaint is that evidence of sales of property adjacent to the parks, boulevards, driveways and plaisance was excluded. But this evidence, although excluded, was before the chancellor, if any of the evidence was, and he determined that, if it had gone to the jury, it should not have operated to increase the verdict, or, in other words, he determined that the verdict was large enough, notwithstanding that evidence. An examination of the excluded evidence will show that the view of the chancellor was correct.

Some indefinite offers of other proof of the same sort were made, but the evidence not admitted. If admitted it would have been merely cumulative, and could no more

have affected the result than those sales which do appear in evidence should affect it.

Taking the excluded evidence with that which was introduced, the verdict was much too large.

R. P. Layton was the witness for appellants who gave the principal evidence of sales of property adjacent to the parks, etc., which was excluded, and I take his evidence as fairly illustrative of the testimony excluded.

Layton testified (P. Rec., 24), (No. 1) to a sale in 1870 to one Wilson of a tract of fifty-three acres, twenty-four acres abutting on the park, sixteen acres one block north and thirteen acres within three or four blocks of the park for $250,000; also (No. 2, page 25) to a sale of six and two-thirds acres at $4,000 per acre; also (No. 3, page 26) forty acres at $4,900 per acre; also (No. 4, page 27) a resale of some of this last by the lot at the rate of $6,000 per acre; also (No. 5) ten acres (page 28) at $6,000 per acre. And on cross-examination (page 33) that the property (No. 1) sold to Wilson fronted on the park; that (page 34) the six and two-thirds acres (No. 2) fronted on the Midway Plaisance; that the forty acres (Nos. 3 and 4) (page 36) had a west front of half a mile on the main park and a south front of a quarter of a mile on the Midway Plaisance; that the ten acres (No. 5) fronted east on the boulevard called Drexel avenue and west (the whole block) on the west park. (Page 37.)

He also testified (P. Rec., 32) that the percentage of increase in value from December, 1868, to December, 1870, caused by the passage of the park act and the location of the park was "at least one hundred or two "hundred per cent. in many instances."

He says (page 35) the six and two thirds acres (No. 2) was within that time enhanced in value by the location of the park "one hundred per cent. or more." That the forty acres which was subdivided (Nos. 3 and 4) was increased within that time "two or three hundred per "cent." That the ten acres (No. 5) was increased within that time (P. Rec., 37) "two or three hundred per "cent."

Having all these sales in mind, this witness testifies (P. Rec., 29), that in his judgment the west eighty acres of the tract in question in this case "was worth from fif- "teen to twenty per cent. less than that piece we sold to "Wilson." He says (p. 30): "As I say, we had made "those other sales that I spoke of, and from its relative "location to the city and otherwise I based my valuation "of property upon that—*the knowledge of what have been "sold in that locality.*"

I do not pause now to comment on the fact that none of these sales were for cash, and all of them were purely speculative, but content myself with taking the witness' own figures, as explained by his testimony.

The fifty-three acres was alleged to have been sold to Wilson at $250,000, or $4.717 per acre.

But the witness says that lands situated as that tract was were increased in value by reason of the location of the park, etc., from 100 to 200 per cent. Taking the average of the increase as 150 per cent., and we find that according to this witness the value of the land would have been $1,880 per acre but for that increase, instead of $4,717 with the increase. He says further that the Kerr tract was worth fifteen to twenty per cent. less than the Wilson tract. The average would be seventeen and one-

half per cent., which on $1,880 would equal $329, deducting which, we find that less the increase wholly attributable to fronting on the park or being immediately adjacent, the witness' valuation was in fact $1,551 per acre. And this is not as high a valuation, nor anything nearly as high as the other expert witnesses on appellants' behalf placed the land as we shall presently see, so that evidence of sales of adjacent outside lands was not only utterly unreliable and an improper test, but the appellants lost nothing by the exclusion of the evidence of such sales. And this will be made perfectly plain by considering all the testimony in the case.

Nothing could be clearer than that Judge GRESHAM's ruling (P. Rec., 70) was strictly correct, that it was not competent under the decision of the Supreme court of Illinois (and it may be remarked that any contrary ruling would have been oppressively unjust), to prove that property adjacent or in immediate proximity to the park sold at several thousand dollars per acre, and then draw the inference that the property in controversy was worth that. The speculative value arising from the existence of the park with fixed lines, necessarily could not attach to property taken to create the park.

Let us now examine all the evidence in the case.

The court should consider in passing upon this question;

(*a.*) That as the South Park Commissioners were to pay cash, the value fixed should be the market value, or if there were no market, still the value for cash or its equivalent.

(*b.*) That the value of land by the acre at wholesale is at least one hundred per cent. less than the value by the

lot at retail, that is, in buying by the acre *en masse* for subdivision, the purchaser must get it by the acre at one half what he expects to obtain for it at retail by the lot. The wholesale purchaser is obliged to allow for interest, taxes, assessments, deductions for streets, etc.

This is testified to by *Judge Higgins*, (P. Rec., 232); *Brian Philpot* (P. Rec., 270); *W. L. Pierce* (P. Rec., 278); *F. B. Peabody* (P. Rec., 290); *Clark* (P. Rec., 316); *Rozet* (P. Rec., 320); and indeed the fact was not disputed.

The most important evidence given on the question of value was undoubtedly that establishing the prices paid in the

PURCHASES MADE BY THE SOUTH PARK COMMISSIONERS.

[In New Hampshire, *Concord R. R. Co.* v. *Greeley*, 23 N. H., 237, it was held that it may be shown what a railroad condemning has paid for other land in the vicinity. In Massachusetts, *Cobb* v. *Boston*, 112 Mass., 183, the contrary rule was laid down, but in the case at bar the appellants put in evidence the Hoyt purchase within the park lines, and any objection to the evidence of such purchases, adduced by appellees, was also expressly waived. (Rec. 661; P. Rec., 328, 329.)]

Upon the trial the appellants offered evidence which was received of purchases made of one Hoyt, *within the park lines*. Accordingly the defendant, the South Park Commissioners, put in evidence, without objection (P. Rec., 328, 329), what they paid for other purchases that they made, including all that they made within the park lines, from December 31, 1869, to December 1, 1870, but

not including those tracts acquired by condemnation proceedings. These purchases are all shown on defendant's Map "B," to be found on page 180 of the printed record.

The Hoyt purchase was made in March, 1871, and it was claimed by appellants that the property consisted of two acres, and that the price paid was $6,000. It was proven by Mr. Cornell (P. Rec., 326), and by the description in the deed (P. Rec., 273), that the property consisted of three small pieces, of 2,383, .82 and .10, respectively, making 3,303 acres, and that the price paid was $5,945, which is $1,801.52 per acre. This property was so situated, being in three small parcels, that the purchase was fairly equivalent to a purchase by the lot.

Now, as I have already pointed out, the wholesale price by the acre, as contradistinguished from the price per acre by the lot, is proven (and not disputed) to be not less than 100 per cent. less, that is, in buying by the acre, *en masse* for subdivision, the purchaser must get it by the acre at one-half what he expects to obtain for it at retail by the lot.

Applying that rule, the price paid to Hoyt was equivalent to $900.75 per acre.

Purchases by the South Park Commissioners of parcels *north of the tract* in question were shown as follows:

Of Platt (Cornell P. Rec., 330) on the 27th of April, 1870, ten acres, at $20,000, including improvements, house and fencing, worth between $2,500 and $3,000, say $2,750, which being deducted would leave $17,250, or at the rate of $1,725 per acre.

Of Morton & Clement (Cornell, P. Rec., 331) fifteen and a fraction acres, December 1, 1869, for $21,425, or $1,397.50 per acre.

Of Bliss & Stephens (Cornell, P. Rec., 329) in January and February, 1870, ten acres at $12,000, or $1,200 an acre.

Of W. P. Gray (Cornell, P. Rec., 329) June 21, 1870, ten acres at $20,000, with improvements worth from $2,500 to $3,000, say $2,750, which being deducted would leave $17,250, or at the rate of $1,725 per acre.

This made purchases *north* of the tract (and therefore nearer the city) of 45 and a fraction acres at $67,925, or an average of $1,507.10 per acre.

Appellees also showed purchases *in* the tract in question of 2 acres from Boyington (Cornell, P. Rec., 331) fronting on Stony Island avenue, made January 21, 1870, for $2,500, or $1,250 per acre, and of one acre fronting on Stony Island avenue, of R. W. Pike for $1,250, purchased July 22, 1870. (Cornell, P. Rec., 332.)

This was three acres of the best of the very tract in question for $1,250 *an acre.*

Appellees also showed purchases south of the tract as follows:

Of Hambright 15 acres in January, 1870, for $10,000, being $666.66⅔ per acre. (Cornell, P. Rec., 333, 334.)

Of Blackwell 10 acres, November 14, 1870, at $15,000 or $1,500 an acre. (Cornell, P. Rec., 333.)

Of Kimbark, 15 acres, November 23, 1870, for $20,000, or $1,333.33⅓ per acre. (Cornell, P. Rec., 332.)

Of H. O. Stone thirty acres, July 6, 1870, for $24,000, or $800 an acre. (Cornell, P. Rec., 334.)

Add the Hoyt purchase, shown by appellants, three and one-third acres, for $5,945 made in March, 1871, $1,801.51 per acre.

This was seventy-three and one-third acres south of the tract in question at $74,945, or an average of $1,022.44 per acre.

Taking the forty-five and a fraction; the three acres and the seventy-three and a fraction acres, makes 121.37 acres, and adding the prices, makes an aggregate of $146,620, which would equal $1,208.04 average per acre.

All of these lands were purchased within the park lines including three acres of the very tract in question, between December 31, 1869, and December 1, 1870, and were shown to be a better average than that in question, and yet the verdict of the jury gave appellants, for poorer land than the average of this, $1,400 per acre. How can they complain?

Tabulated, these figures stand as follows:

PURCHASES NORTH OF TRACT IN QUESTION (MAP "B" P. Rec., 180.)

Apr. 27, 1870,	Platt.....10 ac.	$20,000, less improvements valued at $2,500 to $3,000, say $2,750,	$17,250.....	$1,725 Per acre.
Dec. 31, 1869,	Morton & Clement.15.07.....	.....	21,425.....	1,397 50
June 21, 1870,	Gray.....10 ac.	$20,000 less imp.as in Platt's case.....	17,250.....	1,725
Jan. & Feb., 1870,	Bliss & Stevens 10 ac.....	.....	12,000.....	1,200
	45.07		$67,925	

$67,925 ÷ 45.07 = $1,507.10, average per acre.

IN THE KERR-PHILLIPS TRACT.

Jan. 21, 1870.	Boyington, 2 ac.....	$2,500.....	$1,250
July 22, 1870.	Pike..... 1 ac.....	1,250.....	1,250
	3	$3,750	

$3,750 ÷ 3 = $1,250, average per acre.

SOUTH OF THE TRACT.

Jan. 1870.	Hambright	15 ac.	$10,000	$ 666	66⅔
Nov. 14, 1870.	Blackwell	10 ac.	15,000	1,500	
Nov. 23, 1870.	Kimbark	15 ac.	20,000	1,333	33⅓
July 6, 1870.	H. O. Stone	30 ac.	24,000	800	
March, 1871.	Hoyt	3.3 ac.	5,945	1,801	51 1/33
		73.3	$74,945		

$74,945÷73.3=$1,022.44, average per acre.

	73.3	$67,925
	3	3,750
	45.07	74,945
	121.37 acres.	$146,620

$146,620÷121.37=$1,208.04, average per acre.

On behalf of the South Park Commissioners, certain gentlemen thoroughly versed in real estate values in 1870 and many of them (as Judge Higgins, Hibbard, Wadsworth, Clark), residents and owners of property near that in controversy, testified as experts. The tract in controversy, as the map shows, consisted of an eighty acre tract, less three acres, and a tract on the lake shore of thirty-four acres, making 111 acres in all.

I will give in tabulated form the

TESTIMONY OF THE SOUTH PARK EXPERTS.

Explanation.

The west 80 acres consists of a subdivision of 26 acres on Stony Island avenue front into 26 lots of one acre each, leaving 54 acres to make up the 80.

Of the 26 acres, 3 acres were owned by the South Park Commissioners and excepted in the decree of October 8, 1878, described as lots 9, 10 and 15 of Phillips' subdivision, and bought Jan. and July, 1870, for $1,250 each. This leaves 23 acres.

Some of the experts for the commissioners testify as to the value of the 26 acres, and then of the low and the high respectively in the 54 acres. Mr. Rozet testifies as to the high and low in *the whole 80.*

Foster, the engineer (P. Rec., 173, 174), gives the high land in the 26 acres as 13.01 acres, and the low land at 12.89, and the high land in the 54 acres as 17.83, and the low land as 36.62. For convenience we call the high in the 54 acres 18 instead of 17.83, and the low as 36 instead of 36.62.

The high in the whole 80 is 13.01+17.83, or 30.84, which for convenience we call 31 acres. The low is 12.89+36.62, or 49.51, which for convenience we call 49.

Of the 34 acres but 12.41 remained, the rest having been swallowed up by the lake, but Wadsworth (Rec., 216) gave it as containing, in 1870, 24 acres low and swampy, 4 acres a little higher, and 6 acres ridge.

With this explanation the following figures will be readily understood.

EXPERTS FOR SOUTH PARK COMMISSIONERS.

(1.) *James Wadsworth.*

(P. Rec., 205.)

West 80.			
23 ac. at $1,000 to $1,500 average $1,250; 23 ac. at $1,250, equals	$ 28,750		
Swale $150 to $200, average $175; 36 ac. at $175, equals	6,300		
High 18 ac. at $800, equals	14,400	$49,450	
Shore piece 34 ac.			
6 ac. at $600, equals	3,600		
4 ac. at $400, equals	1,600		
24 ac. at $100, equals	2,400	7,600	$ 57,050

(2.) *Van H. Higgins.*

(P. Rec., 226.)

111 ac. at $800, equals		$88,800	88,800

(3.) *Hibbard.*

(P. Rec., 235.)

West 80.

The Stony Island avenue front $1,000 to $1,200, average $1,100; 23 ac. at $1,100 equals	25,300		
The high in the balance $600 to $800, average $700; 18 ac. at $700, equals	12,600		
The low from $200 to $250, average $225; 36 ac. at $225, equals	8,100	46,000	
Shore piece 34 acres; $300 to $400 per ac., average $350; 34 ac. at $350, equals	11,900	11,900	57,900

(4.) *Farwell.*

(P. Rec., 252.)

West 80.

23 ac. at $1,000, equals	23,000		
36 ac. at $200, equals	7,200		
18 ac. at $600, equals	10,800	41,000	
Shore piece; ridge 10 ac. at $600, equals	6,000		
Low, 24 ac. at $200, equals	4,800	10,800	51,800

(5.) *Philpot.*

(P. Rec., 261.)

The Stony Island front $1,000 to $1,200 per acre, average $1,100; 23 ac. at $1,100 equals	$25,300		
High land in 54 ac. at $800; 18 ac. at $800 equals	14,400		
Low land in 54 ac. at $200; 36 ac. at $200 equals	7,200	46,900	
Shore piece 34 ac. The high at $600 to $700 per acre, average $650; 10 ac. $650 equals	6,500		
Low at $200; 24 ac. at $200 equals	4,800	11,300	58,200

(P. Rec., 274.)

(6.) *Pearce.*

23 ac. at $1,200 equals	27,600		
18 ac. at $500 equals	9,000		
36 ac. at $100 equals	3,600	40,200	
Shore piece. High 10 ac. at $200 equals	2,000		
Low $75 to $100, average $87.50; 24 ac. at $87.50 equals	2,090	4,090	44,290

(P. Rec., 280.)

(7.) *Walsh.*

$800 to $1,200 per ac. average $1,000; 111 ac. at $1,000 equals	111,000		111,000

(P. Rec., 288.)

(8.) *Peabody.*

West 80.			
23 ac. at $1,200 equals	27,600		
36 ac. at $350 equals	12,600		
18 ac. at $700 equals	12,600	52,800	
Shore piece.			
10 ac. at $350 equals	3,500		
24 ac. at $150 equals	3,600	7,100	59,900

(P. Rec., 306.)

(9.) *Clark.*

West 80.			
$750 averaging high and low together; 77 ac. at $750 equals	57,750		
Shore piece.			
34 ac. at $400 equals	13,600	71,350	

(P. Rec., 317.)

(10.) *Rozet.*

All the high in the W. 80, at $1,000; 28 ac. at $1,000 per acre equals	28,000		
All the low at $250; 49 ac. low at $250 equals	12,250		
	$40,250		
Shore piece.			
6 ac. at $1,200 equals	7,200		
28 ac. at $300 to $400 average $350; 28 ac. at $350 equals	9,800		
	$17,000	$57,250	

Wadsworth	$ 57,050
Higgins	88,800
Hibbard	57,900
Farwell	51,800
Philpot	58,200
Pearce	44,290
Walsh	111,000
Peabody	59,900
Clark	71,350
Rozet	57,250
	$657,540

Dividing $657,540 by 10, the number of witnesses, and we have an average price for the whole 111 acres of $65,574, and dividing this by 111, the number of acres in both pieces, and we have as an average price per acre $592.37.

It appeared from the evidence (and the jury who viewed the premises on motion of the appellants could and did see it for themselves) that in order to fit much of the land for sale or use, it would have to be filled, and so far as the piece on the lake shore was concerned, it would have to be protected by a breakwater, twenty-two acres of it having already been swallowed up by the waves, and the cost of filling and of shore protection had to be considered.

AS TO COST OF FILLING.

West 80.

Foster testifies it would require 236,000 cubic yards to fill the low land; that, assuming he had the plant and was not compelled to pay for material, it would cost forty to forty-five cents per cubic yard to fill.

Fitz Simons testifies the cost would be seventy cents. Adding the cost of plant to Foster's estimate and sixty cents is a fair result from these witnesses, who are con-

firmed by *Wolcott and Hodgkins* as to cost if material had to be purchased.

236,000×60=$141,600.

Cost of filling low land of west eighty acres $141,600, or on forty-nine acres of low land a cost of over $2,889 per acre.

The Shore Piece, thirty-four acres.

Foster says to fill the whole thirty-four acres, after deducting for sand in the lake, would take 177,000 cubic yards. If there were but twenty-four acres of low, twenty-four-thirty-fourths or twelve-seventeenths of 177,000,=124,934 cubic yards.

Fitz Simons says it would cost to fill on the lake shore fifty cents. 124,934×50=$62,467.

AS TO COST OF PROTECTION.

Breakwater. Shore line of one-half mile equals 2,640 feet. Fitz Simons says cost would be $20 a lineal foot in 1870. 2,640×$20=$52,800.

A pier of 150 feet at 63d street to connect with the breakwater, Fitz Simons says would cost $12 to $14 a foot. 150×$13=$1,950.

Cost of breakwater	$52,800
Cost of pier	1,950
	$54,750
Cost of filling the 34 acres	$62,467
	$117,217

Or on the 34 acres, the cost would be over $3,447 per acre. On the 24 acres the cost of filling alone would be over $2,600 an acre.

Let us turn now to the testimony of the Kerrs' experts.

I have already considered that of Mr. Layton, No. 1, and will again refer to the results of his evidence. None of the appellee's witnesses made any application of the rule that the value by the acre wholesale is one-half the value by the lot retail, except Roby, who thinks the west eighty was worth $4,500 by the acre wholesale, but does not testify that the rule should not apply to the thirty-four acres.

As to these experts, except Roby, and as to him so far as the thirty-four acres is concerned, I apply the rule of one-half less to the acre wholesale, and I do not include Scammon in the subsequent calculation, because he only speaks of the thirty-four acres.

EXPERTS ON BEHALF OF KERRS.

(2.) *Roby.*		
W. 80 by the lot $4,500.		
77 ac. at $4,500 equals	$346,500	
Shore piece $5,000 per ac.		
34 ac. at $2,500 equals	85,000	431,500
(3.) *Goodrich.*		
W. 80 at $5,000.		
77 ac. at $2,560 equals	192,500	
Shore piece, $6,000.		
34 ac. at $3,000 equals	102,000	294,500
(4.) *Thomason.*		
W. 80 $4,500.		
77 ac. at $2,250 equals	173,250	
Shore piece $5,000 per ac.		
34 ac. at $2,500 equals	85,000	258,250
(5.) *Nixon.*		
W. 80 at $5,000.		
77 ac. at $2,500 equals	192,500	
Shore piece at $6,250.		
34 ac. at $3,125 equals	106,250	298,750

(6.) *Hoyt.*

W. 80 at $5,500 to $6,000, av. $5,750.
77 ac. at $2,875 equals..... 221,375
Shore piece, $5,500 to $6,000, av. $5,750.
34 ac. at $2,875 equals..... 97,750 319,125

(7.) *Snyder.*

W. 80 $5,000 to $6.000 av. $5,500.
77 ac. at $2,750, equals..... $211,750
Shore piece, $5,500 to $6,000 av. $5,750.
34 ac. at $2,875 equals..... 97,750 $309,500

(8.) *Van Allen.*

W. 80 at $5,000.
77 ac. at $2,500 equals.....$192,500
Shore piece at $5,350.
34 ac. at $2,675 equals.....90,950 $283,450

(9.) *Scammon.*

Shore piece $5,000 per ac.
34 ac. at $2,500 equals.....85,000.

(10.) *Fake.*

W. 80 $4,500 to $5,000 av. $4,750.
77 ac. at $2,375 equals.....$182,875.
Shore piece $5,500 to $6,000 av. $5,750.
34 ac. at $2,875 equals.....97,750. $280,625

Roby	$431,500
Goodrich	294,500
Thomason	258,250
Nixon	298,750
Hoyt	319,125
Snyder	309,500
Van Allen	283,450
Fake	280,625
Total	$2,475,700

$2,475,700 divided by 8, the number of witnesses, give an average price of the whole tract at $309,462.50, which divided by 111, the number of acres, gives an average price per acre of nearly $2,788.

But all these witnesses have included from 100 to 200 per cent. on account of the rise in speculative value by reason of the location of the park, and putting that at the average of 150 per cent. we have their estimates reduced to $1,115.20 per acre, while, according to Layton, the value would be $1,551 per acre, which as between them would be $1,333.10 per acre.

So, we have South Park experts, $592.38 per acre; Kerr's experts, $1,333.10 per acre; actual purchases, average, $1,208.04 per acre, including *three* of the twenty-six acres on the Stony Island avenue front.

Yet the jury awarded $1,400 an acre, that is $155,400 for 111 acres. How can appellees complain?

It should be observed in relation to complainant's experts, that they are exceedingly unreliable. They entirely ignore any distinction between the dry ground and the wet ground, the high and the low; they make no allowance for filling or protecting the lake shore, and many of their estimates are confessedly based on what the land might sell for on speculation. Thomasson says as to the thirty-four acres (P. Rec., 85): "I don't think I would "select it for a homestead, but I will tell what I would "select it for—for speculation." Scammon says (P. Rec., 131) the thirty-four acres had a speculative value—"just "as the relative value of pork and beans"—"whatever "people are operating in."

A fair idea of what the land really was is given by the testimony of James Wadsworth, who had lived near it for twenty-five years.

Judge Van H. Higgins, an accomplished lawyer and nevertheless a very large owner of property, acquired by

his own ability, foresight and industry, testified that the tract in question was really unsalable, and that $800 an acre for the entire 111 acres was an exceedingly good price. He was asked (P. Rec., 231):

"Q. You have said, in your opinion, this land was unsalable in 1870. Why do you say it was unsalable? What are the reasons?

"A. That kind of land would be unsalable at almost any time. Land that was so low that it would have to be filled to use for residence purposes would not be salable property. Of course, it could be sold at some price, but you could not get very much for it if you had to force it. That kind of land is not sought after. When one looks at property, they have to see what it is good for; for farm purposes it would be too high priced. It would not be good for business, manufacturing or residence purposes. You have to use it for something to make it valuable. What use could you apply this to? It would not be suitable for manufacturing, and would not be suitable for residences. People in buying for residences would not choose that sort of property. That would be so low they would have to fill it, or use a portion of it by making excavations to get dirt to fill the rest. That is the reason why it would not be salable; people would rather buy something fit for use when they buy it, instead of making it fit for use. That would be my opinion, and I think you would find people who wanted to buy would want to see that they get something for their money.

"Q. Have you any idea about how much it would cost to fill that land so it would be suitable for residence purposes?

"A. The cheapest way to fill it would be to take an excavation and make a canal, and take the dirt out of the canal. If one had a private residence he would have to make a lake and take it out that way. Probably if you had to buy the dirt, it would cost fifty to seventy-five cents a cubic yard. It would cost to raise it only three feet, in the neighborhood of $2,500 an acre, but it would hardly be fit for residences, raising it up three feet—that is, the lowest part; you would not want to build where the ground was only three or five feet—that is, a house

of any considerable value. It might be occupied. It was so far away it would hardly be occupied for small residences, and one would have to wait for that sort of property to make it available. You see any quantity of it is there now.

"Q. In buying land to subdivide in lots, how much gross profit would a man have to make to get out whole?

"A. That would depend on how quick he would sell it. If he could subdivide it and make an auction and sell it right out, he might do it for a great deal less than if it [illegible] several years to close it up. Generally, to buy large tracts and subdivide it into lots you will find it takes several years to close it. I have had a good deal of experience in that line. I would not buy property to-day at one-half what I would get for the lots. Suppose I would sell the lots at $100 apiece, making eight or ten to the acre, I would not give more than $500 an acre for that; it would not pay interest on the whole cost, taxes and assessments, and a man does not get out very much ahead if he makes less than 100 per cent. I bought a large tract over here, and I was figuring it up the other day. I bought it about 1854. That property I bought at $30 a foot, and counting ten per cent., which we had to pay for money at that time, the property would cost nearly $500 a foot to-day; money at seven per cent. doubles in 7.2 years, compounding it. Very few people know, who have not any experience, what it is to buy a tract of land, pay interest, taxes and assessments, and peddle it out. And then the cost of dealing with so many people, recording deeds, mortgages and all that sort of thing is an item of expense very few people understand; that is, the majority of people do not understand it."

No one can peruse this record with care, and not be satisfied that the verdict was too large rather than too small, and that the decree of the chancellor was fully justified, and ought to be affirmed.

FIFTH. AS TO SO MUCH OF THE DECREE AS RELATED TO THE PAYMENT OF THE MONEY INTO COURT.

1. If any error was committed, it could be corrected by a modification of the decree or reversal in part.

2. But no error was committed. The second error assigned by appellants' counsel is to be found under his point II. and on page 10 of his argument, and is that the court erred in deducting from the amount decreed as the value of the land, as a payment on account thereof, the sum of $82,800.

It will be perceived that this alleged error does not relate to the decree proper which was based upon the verdict finding the value as of August 27, 1870, and "ordered, "adjudged and decreed that said amount of one hundred "and fifty-five thousand four hundred dollars be and "it is hereby adjudged to be the value of said "tracts of land at that date; and it appearing to the court that the said complainants cannot at present comply with said decree of October 8, 1878, and that various claims are set up as against said complainants to said value or portions thereof, it is ordered that the South Park Commissioners pay into court the said sum of $155,400 with interest thereon from the 27th day of August, A. D. 1870, at the rate of six per cent. per annum to the date of such payment, and that upon such payment into court the said South Park Commissioners be discharged from further liability for interest in the premises, and that the distribution of said money when paid into court be reserved until further order." (P. Rec., 15.)

This covers the decree proper, and the suggested error is not to any part of said decree.

But inasmuch as the Kerrs had received large amounts of money from the South Park Commissioners, it became necessary for the court to determine what sum remained to be paid into court to satisfy the decree. Accordingly a supplemental order is attached to the decree as follows:

"And the South Park Commissioners exhibiting to the court the pleadings, orders, proofs and decree of August twenty-sixth, 1882, in a certain cause on the chancery side of this court, wherein the South Park Commissioners was complainant, and Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, executors, etc., of William P. Kerr, deceased, and others, were defendants, wherefrom it appears that on the twenty-ninth day of November, 1879, the sum of eighty-two thousand eight hundred dollars, and on the twenty-sixth day of February, 1880, the sum of seventy-two hundred dollars, of the moneys of the South Park Commissioners came to the hands of the said Kerrs, complainants in this case, and that the sum of forty-two hundred and twenty dollars and nineteen cents was paid into this court in that suit December first, 1882, as appears from the order of this court in that cause on that day entered, all these moneys being paid on account of the lands in this cause mentioned; and it further appearing that the sum of twenty-five thousand dollars was paid into court in this cause on the eighteenth day of February, 1884, on account of said lands, it is ordered that said several sums of eighty-two thousand eight hundred dollars, with interest from November twenty-ninth, 1879; seventy-two hundred dollars, with interest from February twenty-sixth, 1880; forty-two hundred and twenty dollars and nineteen cents as of the date of the payment into court herein provided for, and twenty-five thousand dollars, with interest from February eighteenth, 1884, be applied on said principal sum of one hundred and fifty-five thousand four hundred dollars, and interest, and that the South Park Commissioners pay into court under this decree only the balance thereby arrived at, together with the

commission provided by law thereon, and the sum of two hundred and fifty dollars, the commission on the sum of twenty-five thousand dollars so paid February eighteenth, 1884, as aforesaid, and interest thereon from that date.

"And it is also ordered that the deed of James R. Doolittle, referred to in said decree of August twenty-sixth, 1882, in the cause of the South Park Commissioners against Susie M. Kerr and others, may be executed and delivered to said South Park Commissioners, and that thereupon said sum of forty-two hundred and twenty dollars and nineteen cents may be taken from the registry of this court by said complainants Kerr, without prejudice to any appeal in said cause in which said money was so paid into court, and deed directed to be delivered as aforesaid."

It is to this supplemental order that the alleged error is assigned, and even though the error were well assigned the decree would not therefore be disturbed, but the order would be modified or reversed with directions.

But there was no error in the application of the payments, or in any part of this order supplemental to the decree.

This order treats of four sums of money of the South Park Commissioners, viz: $82,800 which came to the hands of the Kerrs November 29, 1879 (really a little before, but that is in their favor); $7,200 which came to their hands February 26, 1880; $4,220.19 paid into court in the case of *South Park Commissioners* v. *Kerrs* (No. 124 on the present calendar), December 1st, 1882, and $25,000 paid into court *in this cause* February 18, 1884. (See order, P. Rec., 7, 8.)

These sums were ordered to be applied on the amount to be paid into court, with interest from the dates above given respectively, except the sum of $4,220.19, which was directed to be applied as of the date of the payment

into court provided for in the order, and which the Kerrs were permitted to withdraw without prejudice to their appeal from the decree in *S. P. Comrs.* v. *Kerr*, No. 124 on the present calendar. The commissioners were also directed to pay in the deposit charges of one per cent. on the $25,000 they had paid in February 18, 1884, and also the deposit charges on the amount to be paid in under this decree.

Accordingly on the 23d day of January, A. D. 1885, the commission paid into court the sum of $143,104.

The computations were made to January 24, 1885, and a little over the amount was paid in to make it perfectly certain that there was enough. The computations were as follows:

COMPUTATION BY CLERK OF CIRCUIT COURT.

Amount of verdict		$155,400	
" " Interest, 6 per cent., from Aug. 27, 1870 to Jan. 24, 1885, 14 years, 150 days		134,367 78	$289,767 78
Cr.			
Paid Nov. 29, 1879	$82,800 00		
Interest from Nov. 29, 1879, to Jan. 24, 1885, 1,887 days	25,602 21	108,402 21	
Paid Feb. 26, 1880	7,200 00		
Interest from Feb. 26, 1880, to Jan. 24, 1885, 1,792 days	2,120 94	9,320 94	
Paid Feb. 18, 1884	25,000		
Interest from Feb. 18, 1884, to Jan. 24, 1885, 341 days	1,401 37	26,401 37	144,124 52
			$145,643 26
Amount in sub treasury, as of Jan. 24, 1885		$ 4,262 42	
Less clerk's commission of 1 per cent		42 62	4,219 80
			$141,423 46
Amount of clerk's commission of 1 per cent. on $141,423.46			1,414 23
			$142,837 69
Commission and interest on $25,000			264
			$143,101 69

The alleged error consists, as is said in applying the $82,800 as a payment, and the same objection would apply to the $7,200.

The court made the adjustment in question so far as these amounts of $82,800, $7,200 and $4,220.19 are concerned, upon an examination of the "pleadings, orders, "proofs and decree of August twenty-sixth, 1882, in a "certain cause on the chancery side of this court, wherein "the South Park Commissioners was complainant and "Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, exe-"cutors, etc., of William P. Kerr, deceased, and others, "were defendants," namely, the record in No. 124, on the present calendar of this court, which record is a part of the record *in this cause* so far as this order as to the payment of the money into court is concerned.

Now, upon examining that record it will be found that $90,000 of South Park funds came to the hands of the Kerrs under such circumstances as entitled the South Park Commissioners to follow the money into forty-seven and one-sixth acres of the land in question, and counsel in effect complains that if that forty-seven and one-sixth acres belonged to the commissioners, or the commissioners were entitled to damages for breach of covenant in respect thereto or any part thereof, then the Circuit court instead of deducting the $82,800 and the $7,200 as payments, should have deducted the value as fixed by the decree of forty-seven and one-sixth acres of land and interest from August 27, 1870. That value was $1,400 an acre, that is, $155,400 for 111 acres.

Forty-seven and one-sixth acres at $1,400 would be $66,033.33⅓, and the interest from August 27, 1870, to January 24, 1885, would be $57,085.07, making $123,-117.41 to be deducted.

But the Circuit court instead of deducting $123,117.41, treated the $82,800 and the $7,200 as payments on account, and deducted them with interest, the aggregate being $117,723.15, or five thousand three hundred and ninety-four dollars and twenty-six cents *less* than the South Park Commissioners were entitled to have deducted. The error, if any, was an error of which the South Park Commissioners could complain, but the Kerrs could not. If Mr. Isham insists upon it, the order might be modified so as to deduct $123,117.41 instead of $117,723.15, and the sum of $5,394.26 might be directed to be paid back to the commissioners out of the moneys in the registry of the court below.

It should be observed also that in making the deductions in question the Circuit court did exactly what the Kerrs insisted upon in the case of *South Park Commissioners* v. *Kerrs* (No. 124 on the present calendar). I have fully argued these matters in that case, but let me repeat:

First: W. P. Kerr in his lifetime answered the bill in that case, and insisted in that answer (P. Rec., in No. 124, pp. 20, 21) that the South Park Commissioners "*are* "*entitled to a credit as part payment as purchaser of said* "*land from this defendant of eighty-two thousand, eight* "*hundred dollars, with interest from November 14, 1879,* "*and of about seven thousand two hundred dollars, with* "*interest from February 26, 1880, to be entered and given* "*by this defendant upon and against the price and value of* "*said half section of land when the same shall be taken* "*and condemned by the South Park board, and the value* "*thereof and the damages accruing to him therefor shall* "*be ascertained and fixed by a jury in the Circuit court* "*of the United States for the Northern district of* "*Illinois*," etc.

Kerr dying, the suit was revived, and Susie M., Rosa L., and Joseph B. Kerr, his executors, etc., filed their answer, reiterating that the $90,000 was to stand as a credit and be allowed "*with interest thereon at the rate of six "per cent. per annum from the date of such advance.*" (P. Rec. in No. 124, pp. 51, 53.)

And to this Mr. *Dunlevy* testified (P. Rec. in No 124, p. 228), and Mr. *R. S. Thompson* (P. Rec. in No. 124, p. 92).

It certainly does not lie in the mouths of the Kerrs to complain of the deductions in question which were made in exact accordance with their own contention, and which as made resulted in a gain to them of $5,394.26.

The South Park Commissioners could alone complain and they do not do so, as they wish for an end to this litigation.

Second. That the right of the South Park Commissioners to at least the value as fixed of 47⅙ acres, seems to be quite clear upon the grounds stated in my argument in No. 124.

Mary C. Dobbins purchased one-fourth of the tract, and her title was obtained and placed in the trustee, and the incumbrance thereon paid off by use of South Park money, which being trust funds, the South Park Commissioners could follow it into the land, and avail of the covenants with her in respect thereto.

The evidence shows that the purchase was made by Mr. Dobbins for Mary C. Dobbins, his wife, on the 12th day of October, A. D. 1872. The conveyance is to be found on page 57 of the printed record, in No. 124, and was made, as appears from the oral evidence in the case, to Daniel

P. Rhodes, as a mere matter of convenience. Rhodes resided in Ohio, and the conveyance was made to him, so that in case of litigation, Rhodes, being a non-resident of Illinois, might bring suit in the United States court. He conveyed to Mrs. Dobbins November 26, 1872, but that deed was not recorded until April 16, 1876. (P. Rec., 59.) By the deed of Kerr to Rhodes (P. Rec. in No. 124, 57), Kerr conveys, not his "right, title and interest," but "all that part, tract or parcel "of land described as follows, to wit: being the undivided "fourth part of the south half of fractional section thirteen "(13), town thirty-eight (38), north of range fourteen "(14), east, in Cook county, Illinois, save and except the "north one-third of lot three (3) and excepting also lots nine "(9), ten (10), eleven (11), fifteen (15) and sixteen (16) "in C. B. Phillips' subdivision of the western part of said "half section, together with all and singular the tene-"ments, hereditaments and appurtenances thereto belong-"ing, etc." And the deed contained the following covenant: "And the said William P. Kerr, for himself, his "heirs, executors and administrators, do hereby covenant, "promise and agree to and with the said party of the "second part (his) heirs and assigns, that he has not "made, done, permitted or executed any act or acts, thing "or things whatsoever, whereby or by means whereof "the above mentioned and described premises, or any "part or parcel thereof, now or at any time hereafter, "shall or may be impeached, charged or encumbered in "any manner or way whatsoever."

The answer set up that the tract of land in question contained two hundred and twenty-four acres, but no proof was adduced to sustain the allegation; on the contrary, the South Park Commissioners proved by J. F.

Foster, their engineer (P. Rec., in No. 124, p. 188), that in 1870 the acreage was one hundred and ninety-four acres, (the government survey having been one hundred and ninety-six acres.) That fact was established in this case (1,142) and was thereupon agreed to by stipulation. Assuming the tract to have contained one hundred and ninety-four acres, the deed of Kerr to Rhodes excepted five one-acre lots and the north one-third of an acre lot. Deducting this five and one-third acres, leaves one hundred and eighty-eight and two-thirds acres, one-fourth of which, or forty-seven and one-sixth acres, was purchased by Mrs. Dobbins and conveyed to her by the deed aforesaid; and inasmuch as Kerr warranted as aforesaid, if any part of the title to the whole tract failed by reason of any omission or commission of his own, he was bound to make his warranty good to the extent of forty-seven and one-sixth acres.

In the case at bar the *entire* record embraces that which was before this court in the fall of 1881, on appeal from the decree of October 8, 1878, and the decree of January 20, 1885 (P. Rec., 15), recites that it is predicated upon "the pleadings, orders and decree of October eighth, "1878," as well as the mandate, etc.

The record discloses that the South Park Commissioners claimed title under one Phillips, the original owner of the land, and that Kerr claimed title under sale upon an execution in his favor against Phillips, which sale, it was contended by the South Park Commissioners, was void because Kerr had caused it to be made in violation of the homestead laws of the State of Illinois. The decision of Judge Harlan held the sale void as to eighty acres.

Kerr v. *S. P. Commissioners*, 8 Bissell, 276.

And the decree rendered by him upon that finding was affirmed by this court December 12, 1881. (See mandate, 1.)

Eighty acres of the tract was lost to Kerr therefore by reason of his own acts, and Mrs. Dobbins was entitled either to forty-seven and one-sixth acres out of the remainder, or which is the same thing, to damages for breach of the warranty in question, or to twenty-seven and three-quarters acres, and damages for the loss of nineteen and five-twelfths acres.

In *Beach* v. *Miller*, 51 Ill., 211, the Supreme court holds that the fact that either or both parties know at the time the covenant is made that the grantor has no title in a part or in any of the land does not affect the right to recover damages for its breach; and in *Wadhams* v. *Innis*, 4 App. Court (Illinois) Reports, 646, this is followed, and it is said that in actions for a breach of the covenant of seisin, where the title to the whole tract has failed, the measure of damages is the consideration paid for the land and 6 per cent. interest. Where the title fails as to a part only, and the purchase money paid for such part can be ascertained, such purchase money and interest is also the measure of damages, but where the title fails to a part of a tract which has been sold for a gross sum, and the consideration paid for such part cannot be separately ascertained, the measure of damages is the relative value of the land to which the title has failed as compared with that which is valid in proportion to the price paid for the whole. And in the same case reported under the title of *Wadhams* v. *Swan*, 109 Ill., 46, that ruling is affirmed and the Supreme court held that the grantee is entitled to an action upon a warranty of title although he may have known at the time of the defect in the title. Whether we treat

failure of title as to be compensated in land, that is to say, that Mrs. Dobbins was entitled to an undivided one-fourth, if so much land remained to the Kerrs as would give her that quantity, or that she was entitled to receive the consideration and interest or the price ultimately realized, and interest, on the appropriation of the land, makes no difference. Although not shown in No. 124, it appears in this case (1142) that at the time of this sale of Kerr to Mrs. Dobbins, the whole title was in litigation before Judge Harlan (whose decree was introduced in evidence in No. 124, but the whole record was not), and therefore the deed was nothing more or less than an assignment of so much of the proceeds of that litigation as equaled an undivided one-fourth of the whole tract, and the covenant operating as a warranty that by no act of Kerr, either of commission or omission that share of proceeds would be any less than the proceeds of forty-seven and one-sixth acres, the result is that the South Park Commissioners became entitled either to the forty-seven and one-sixth acres, or to so much of the valuation of the whole tract as equaled the proportionate valuation of forty-seven and one-sixth acres thereof.

Mr. Dobbins testifies (P. Rec. in No. 124, p. 195), that "Mrs. Dobbins always claimed one-fourth of the fraction, "which Dunlevy represented was 217 acres; she claimed "she bought one-fourth of that, and if it was all lost but "that, she claimed that."

She paid $80,000 in October, 1872, at which time the evidence shows lands in that vicinity were higher than in 1870. She believed she was paying for one-fourth of 217 acres, which would be about $1,475 per acre. But the tract contained but 194 acres, and five and one-third acres was subtracted in the deed from that, so that in fact she

bought one-fourth of 188⅝ acres, or 47⅛ acres. This would make the consideration about $1,700 an acre.

The measure of damages on a breach would be the purchase money and interest, which would be more than $1,400 and interest, but the South Park Commissioners only claimed to deduct the valuation fixed by the jury of $1,400 an acre and interest (as decreed October 8, 1878), for 47⅛ acres. They claimed to stand in Mrs. Dobbins' shoes, and to be entitled to avail themselves of the covenant with her.

This deduction would have been, as I have said, $123,117.41, but the chancellor instead of making that deduction, only deducted the $82,800 and the $7,200, with interest from date of payment, which aggregated $117,723.15, and gave the Kerrs the benefit of $5,394.26. The South Park Commissioners might have complained of this, but they have not, in view of their conviction *debet esse finis litium*. Upon the whole case it is earnestly urged that entire justice has been done, and that no error has been committed in the protracted proceedings shown by the record, and it is hoped that the decree will be affirmed in its entirety.

Respectfully submitted.

MELVILLE W. FULLER,
Of Counsel for South Park Commissioners.